PAROLE LEGISLATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON NATIONAL PENITENTIARIES

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 2383, S. 2462, S. 2955, S. 3185, S. 3674

TO AMEND PAROLE LEGISLATION

JULY 25, 26, AND 27, 1972

Printed for the use of the Committee on the Judiciary

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TUESDAY, JULY 25, 1972

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2228, New Senate Office Building, Senator Quentin N. Burdick presiding.

Present: Senators Burdick (presiding) and Mathias.

Also present: James G. Meeker, staff director, Christopher Erlewine, assistant counsel; Ronald E. Meredith, minority counsel; Judith E. Snopek, chief clerk; Orrell D. Schmitz, research assistant; and Rita Highbaugh, minority research assistant.

Senator BURDICK. The hearing will please come to order.

These hearings are being convened today to consider several bills designed to reform our present parole system.

Parole is neither a new nor radical penal concept. It was first introduced in American prisons in 1817 as a reward for good behavior.

As our emphasis in corrections has changed from punishment to rehabilitation, our concept of parole has also changed. Today the purpose and goal of parole is to identify and release the inmates who are ready, and for whom continued confinement would be of no value. By returning this type of inmate to the community we increase his chances of becoming a law-abiding citizen. At the same time, we can save the taxpayer the high cost of incarceration.

I believe that the U.S. Parole System should be a model for the Nation in achieving these goals, and I believe it is proper for this subcommittee to ask whether or not the Board has the tools necessary to do this important job.

A recent study of Federal parole by a consultant to the U.S. Administrative Conference cited several significant deficiencies. Perhaps the most serious obstacle preventing the efficient administration of Federal parole is the overwhelming workload and the insufficient numbers of people employed to handle it.

In 1970, the eight-man Parole Board made over 17,000 official decisions relating to parole, revocation or related matters. This combination of heavy workload and insufficient staffing results in severe time constraints on efforts by the Parole Board to adequately consider each inmate's application for parole. The study found that "because the parole hearing officer has to study the file before the inmate appears, and to dictate a summary and recommendation afterward, the time

available for the hearing itself is usually no more than 10 or 15 minutes."

Second, the inmate appears before the hearing officer without help to prepare himself. He is not entitled to see the file on which the decision for parole will primarily be based.

Third, the inmate is rarely informed as to the specific reasons for denial of his parole application, even when the decision is delayed.

The American people have a right to demand a parole system which is both efficient and effective. This system must have the necessary tools to review and screen eligible inmates.

The inmate should have an active role in the parole process. He must see that the decision to grant or deny parole is not arbitrary, and that his efforts at good behavior and rehabilitation will be carefully weighed and considered.

These are views which are widely shared, and it is my hope that this subcommittee will seek out the legislative solutions to these problems in considering the legislation which is pending.

We must also keep in mind that a paroling agency does not operate by itself. Parole will always be affected by:

1. The quality of rehabilitation programs available to inmates in the institutions, and

2. The work of parole officers in the community, who must provide not only supervision, but also counseling and assistance in the transition to life on the street.

The subcommittee must also take note of recent judicial action setting precedents for parole.

The June 29, 1972, Supreme Court decision, *Morissey* v. *Brewer*, written by Chief Justice Burger, addresses the issue of due process requirements in the procedure for parole revocation. The Court specifically rejected the traditional argument that parole is a privilege and not a right and that, therefore, constitutional rights do not apply. Instead, the Court found that at least in regard to the process of parole revocation the parolee's liberty involved "significant values within the protection of the due process clause of the 14th amendment."

Minimum standards of due process required by the Courts include: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of the evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses; (e) a "neutral and detached" hearing officer; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

The message from experts, from professionals, and from the Court is clear. Parole decisions that are made without fairness to both the offender and the public welfare create bitterness and lack of respect for our system of criminal justice.

We must reexamine the parole process, to see that it is achieving the goals which the Nation has set out, and that it is doing so in a manner which is fair and efficient.

At this time I would place into the record all the appropriate bills.

S. 2383, S. 2462, S. 2955, S. 3185, and S. 3674, above referred to, follow:)

[S. 2383, 92d Cong., first sess.]

A BILL To amend certain provisions of chapter 311 of title 18, United States Code, relating to parole

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4202 of title 18, United States Code, is amended to read as follows:

"§ 4202. Prisoners eligible

"A Federal prisoner, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of over one hundred and eighty days, may be released on parole after serving one-third of such term or terms or after serving one year, whichever is the lesser, except that in the case of any such Federal prisoner serving a life sentence, such prisoner may be released on parole after serving fifteen years of such sentence."

SEC. 2. Subsection (a) of section 4203 of title 18, United States Code, is amended to read as follows:

"(a) If it appears to the Board of Parole from a report and recommendation by the proper institutional officers or upon application by a prisoner eligible for release on parole, that such prisoner has observed the rules of the institution to which he is confined, that he has made positive efforts toward his own rehabilitation, that there is a reasonable probability that he will live and remain at liberty without violating the law, and if in the opinion of the Board such release is not incompatible with the welfare of society, the Board may in its discretion authorize release of such prisoner on parole.

"Such parolee shall be allowed, in the discretion of the Board, to return to his home, or to go elsewhere, upon such terms and conditions, including personal reports from such paroled person, as the Board shall prescribe, and to remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced.

"Each order of parole shall fix the limits of parolee's residence which may be changed in the discretion of the Board".

SEC. 3. (a) Subsection (a) of section 4208 of title 18, United States Code, is amended to read as follows:

"(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require, may designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner may be released on parole at such time as the Board of Parole may prescribe, without regard to the provisions of section 4202 of this title, but in no event shall such minimum term be more than one-third of the maximum sentence imposed by the court. The court shall set forth its reasons for each such minimum term, which it so designates.".

(b) The first paragraph of subsection (c) of section 4208 of title 18, United States Code, is amended to read as follows:

"(c) Upon commitment of any prisoner sentenced to imprisonment under any law of the United States for a definite term or terms of over one hundred and eighty days, the Director of the Bureau of Prisons, under such regulations as the Attorney Genearl may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Board of Parole a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Board of Parole may make such other investigation as it may deem necessary. In any case involving a prisoner with respect to whom the court has designated a minimum term in accordance with subsection (a) of this section, such report and recommendations shall be made not less than ninety days prior to the expiration of such minimum term.".

SEC. 4. (a) The amendments made by this Act shall not be construed as affecting or otherwise altering the provisions of sections 401 and 405 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 relating to special parole terms.

(b) The amendment made by section 1 of this Act shall not apply to any offense for which there is provided a mandatory penalty.

[S. 2462, 92d Cong., first sess.]

A BILL To amend section 5002 of title 18 of the United States Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That § 5002 of title 18, United States Code is amended to read as follows:

"§ 5002. Advisory Corrections Council

"(a) There is hereby created an Advisory Corrections Council composed of two United States judges designated by the Chief Justice of the United States and ex officio, the Chairman of the Board of Parole, the Director of the Bureau of Prisons, the Chief of Probation of the Administrative Office of the United States Courts, the Administrator of Law Enforcement Assistance Administration or his designee at a policy level, the Secretary of Health, Education, and Welfare or his designee at a policy level, the Secretary of Labor or his designee at a policy level, the Commissioner of the Civil Service Commission or his designee at a policy level, the Secretary of Housing and Urban Development or his designee at a policy level, the Director of the Office of Economic Opportunity or his designee at a policy level, and the Secretary of Defense or his designee at a policy level. The judges first appointed to the Council shall continue in office for terms of three years from the date of appointment. Their successors shall likewise be appointed for a term of three years, except that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. The Chairman shall be designated annually by the Attorney General.

"(b) The Council shall meet quarterly and special sessions may be held from time to time upon the call of the Chairman.

"(c) The Council shall consider problems of treatment and correction of all offenders against the United States and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States and other appropriate officials as may improve the administration of criminal justice and assure the coordination and integration of policies of the Federal agencies, private industry, labor, and local jurisdictions respecting the disposition, treatment, and correction of all persons convicted of crime. It shall also consider measures to promote the prevention of crime and delinquency and suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve with compensation but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.

"(d)(1) The Council shall appoint an Executive Secretary/Administrative Assistant and such other personnel as may be necessary to carry out its functions. The Executive Secretary/Administrative Assistant shall supervise the activities of persons employed by the Council and shall perform such other duties as the Council may direct.

"(2) The Council may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed $100 per day.

"(e) The Council is authorized to request from any department, agency, or independent instrumentality of the Government any information or records it deems necessary to carry out its functions, and each such department, agency, and instrumentality is authorized to cooperate with the Council and, to the extent permitted by law, to furnish such information and records to the Council, upon request made by the Chairman or by any member when acting as Chairman.

"(f) The first meeting of the Council shall occur not later than thirty days after the enactment of this legislation.

"(g) There are hereby authorized to be appropriated such amounts as may be necessary to carry out the purposes of this section."

[S. 2995, 92d Cong., first sess.]

A BILL To amend certain provisions of title 18, United States Code, relating to the release of certain Federal prisoners

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of section 4205 of title 18, United States Code, is amended to read as follows: "The unexpired term

of imprisonment of any such prisoner shall begin to run from the date he returned to the custody of the Attorney General under said warrant, but the amount of time which such prisoner shall be required to serve as a result of his retaking shall be reduced in all cases by a period of time equal to one half of that period commencing with his release pursuant to section 4163, 4164, 4202, or 4208, of this title, and ending with the date of the issuance of such warrant for his retaking. In addition, the Board of Parole shall have the discretion, when the circumstances warrant it, to diminish the period which such prisoner was sentenced to serve by the full amount of time he spent on parole prior to his retaking.

SEC. 2. Section 4207 of title 18, United States Code, is amended by revising the third paragraph thereof to read as follows: "If such order of parole shall be revoked and the parole terminated, the said prisoner may be required to serve the remainder of the term for which he was sentenced subject to the provisions of section 4205 of this title.

SEC. 3. The amendments made by this Act shall be applicable with respect to any person who, on or after the date of enactment of this Act, is on parole pursuant to sections 4163, 4164, 4202, 4208 of chapter 311 of title 18, United States Code, or is released pursuant to such sections or chapter.

[From the Congressional Record, May 30, 1972]

FEDERAL CORRECTIONS REORGANIZATION ACT—AMENDMENT

AMENDMENT NO. 1210

(Ordered to be printed and referred to the Committee on the Judiciary.)

Mr. PERCY. Mr. President, on behalf of myself and Senators MONTOYA and BROCK, I submit an amendment in the nature of a substitute to S. 3185, and I ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

"AMENDMENT NO. 1210

"Strike out all after the enacting clause and insert in lieu thereof the following:

"That (a) this Act may be cited as the 'Federal Corrections Reorganization Act'.

"(b)(1) The Congress hereby declares that a reorganization of the Federal departments and agencies dealing with parole, probation, and other activities relating to the disposition of Federal offenders is necessary to insure a unified and coordinated approach to the rehabilitation of such offenders and the protection of society.

"(2) The Congress further declares that the Federal Government has primary responsibility for formulating coordinated Federal corrections policies with regard to prison construction, the appointment and training of corrections personnel, pretrial and posttrial release programs, alternatives to incarceration, the establishment of a national clearing house and study center for corrections, and other such activities.

"(3) The Congress further declares that the Federal Government has a responsibility in recommending standards and guidelines to States for the operation of programs concerning State correctional facilities, and the treatment of State offenders.

"TITLE I—FEDERAL CORRECTIONS ADVISORY COUNCIL ESTABLISHMENT; COMPOSITION

"SEC. 101. (a) There is hereby established the Federal Corrections Advisory Council (hereinafter referred to in this Act as the 'Council') which shall consist of the following members—

"(1) two members who shall be former inmates of Federal Correction Institutions;

"(2) two members who shall be criminologists;

"(3) one member who shall be an attorney;

"(4) one member who shall be a former or retired judge of a Federal court;

"(5) two members who shall be involved in law enforcement;

"(6) two members who shall be sociologists;

"(7) two members who shall be psychologists;

"(8) one member who shall be appointed on the basis of his knowledge and interest in the field of corrections;

"(9) one member representing the communications media;

"(10) Director of the Federal Bureau of Prisons (ex officio member);

"(11) Administrator of Law Enforcement Assistance Administration (ex officio member);

"(12) Attorney General of the United States (ex officio member);

"(13) Associate Justice of the Supreme Court (ex officio member), who shall be designated by the Chief Justice of the United States;

"(14) Secretary of Health, Education, and Welfare (ex officio member);

"(15) Secretary of Labor (ex officio member);

"(16) Director of the Office of Management and Budget (ex officio member);

"(17) Chairman of the Federal Circuit Offender Disposition Board (ex officio member); and

"(18) Chairman of the District of Columbia Court of Appeals Offender Disposition Board (ex officio member).

"(b) The Council shall elect, from among its members, one member to serve as Chairman. The Council may appoint and fix the compensation of a Director (who shall be responsible for the administrative duties of the Council) and such other staff personnel as it deems necessary.

"(c) Members of the Council designated in clauses (1) through (9) of subsection (a), of this section shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve for terms of five years, except that of such members first appointed, two shall serve for terms of one year, two shall serve for terms of two years; two shall serve for terms of three years, two shall serve for terms of four years, and one shall serve for a term of five years, as designated by the President at the time such appointments are made. Members shall be eligible for reappointment.

"(d)(1) Members of the Council designated in clauses (1) through (9) of subsection (a) of this section shall receive compensation at the rate of $100 for each day on which they are engaged in the performance of duties of the Council, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of duties of the Council.

"(2) Members of the Council serving ex officio shall serve as members of the Council without additional compensation, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Council.

"(e) The first meeting of the Council shall be called by the Attorney General of the United States.

"PURPOSE OF COUNCIL

"SEC. 102. It shall be the purpose of the Council—

"(1) to exercise an investigative and advisory role in the oversight and direction of the Federal and District of Columbia corrections systems;

" 2) to recommend standards and guidelines for States to meet before being eligible to receive grants under any Federal program involving State law enforcement and correction agencies, including the reorganization of their criminal justice systems along the lines set forth in titles II and III of this Act; and

"(3) to serve as a clearinghouse for study, planning, and dissemination of information in the field of corrections.

"FUNCTIONS OF COUNCIL

"SEC. 103. (a) The Council shall recommend to the courts of the United States and the District of Columbia and other appropriate Federal and District of Columbia instrumentalities and officers, guidelines, and standards for—

"(1) the training and appointment of correctional employees within the Federal and District of Columbia system;

"(2) the design of the physical plan and facilities of Federal prisons and the replacement of existing Federal and District of Columbia correctional institutions;

"(3) the operations of all Federal and District of Columbia correctional institutions;

"(4) pretrial and posttrial release programs;

"(5) the operation of the Bureau of Prisons; and

"(6) States to meet as a condition of eligibility for Federal grants which may be made by the Law Enforcement Assistance Administration, or any other Federal instrumentality when such grant has a substantial relationship to corrections, pretrial release, post-trial release, or alternatives to incarceration.

"(b) The Council shall establish an information and study center for—

"(1) the collection, evaluation, and dissemination to appropriate Federal, State, or private organizations of information relating to corrections and corrections reform;

"(2) the training of personnel in the field of Federal and State corrections, including parole and probation personnel;

"(3) conducting seminars for attorneys, judges, administrators, Federal and State correctional officials, ex-offenders, and students of the correctional system;

"(4) the study, analysis, and encouragement of plans and projects relating to corrections submitted or recommended by private organizations;

"(5) the development of plans which, if adopted, would reorganize the Federal and District of Columbia corrections systems in a manner which, within the five-year period following the date of the enactment of this Act, would give the Federal and District of Columbia courts maximum flexibility in deciding upon the disposition and treatment of Federal and District of Columbia offenders, and which would give the district court disposition boards, District of Columbia Disposition Board, and Federal and District of Columbia prison authorities maximum flexibility with respect to disposition and treatment; and

"(6) the study of plans and petitions from Federal and District of Columbia prisoners and ex-offenders.

"(c) The Council shall submit annually to the President of the United States, the Chief Justice of the United States, and the Congress (through the Committees on Government Operations, Appropriations, and Judiciary of the Senate and House of Representatives) a public report which shall——

"(1) examine the effectiveness of the various Federal and District of Columbia programs and activities relating to the field of corrections;

"(2) review and assess other programs in the field of corrections which are unique or otherwise of national significance;

"(3) recommend legislative action to the Congress, and recommend to the President and the Chief Justice administrative actions which could be taken by the executive and judicial branches, to improve the system of corrections;

"(4) comment specifically on the implementation of the recommendations of the so-called Wickersham Commission (the National Commission on Law Observance and Enforcement—1931), and the report of the President's Commission on Law Enforcement and Administration of Justice—'The Challenge of Crime in a Free Society'; and

"(5) comment specifically on the introduction of legislation to establish academies for correctional officers training on either a national or regional basis.

"(d) In carrying out its functions under this Act, the Council shall insure the coordination and integration of policies and programs respecting the disposition, treatment, and rehabilitation of offenders on the Federal and State levels.

"(e) The Council shall assist in the development of funding requests for all Federal and District of Columbia instrumentalities which participate in or contribute to the areas of correction and the rehabilitation of offenders, and shall, upon request, be available to advise the Congress on matters involving the allocation of Federal resources in such areas.

"(f) Any vacancy in the membership of the Council shall not affect its powers and shall be filled in the same manner as the original appointment was made.

"(g) The Council may establish such temporary task forces as it may deem necessary.

"(h) The Council is authorized to enter into contracts or other arrangements for goods or services, with public or private profit organizations, to assist it in carrying out its duties and functions under this Act.

"TITLE II—FEDERAL CIRCUIT OFFENDER DISPOSITION BOARD; DISTRICT OF COLUMBIA COURT OF APPEALS OFFENDER DISPOSITION BOARD

"ESTABLISHMENT OF FEDERAL CIRCUIT OFFENDER DISPOSITION BOARD; COMPOSITION

"SEC. 201. (a) There is hereby established the Federal Circuit Offender Disposition Board (referred to in this Act as the 'Circuit Board'), which shall be composed of eleven members appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall represent diverse backgrounds, including, but not limited to, the fields of correction, psychiatry, psychology, sociology, law, medicine, education, and vocational training. Such members shall serve for terms of 10 years, except that, of the members first appointed, three shall serve for terms of two years, three shall serve for terms of five years, three shall serve for terms of eight years, and two shall serve for terms of ten years, as designated by the President at the time of their appointment. Each member shall be designated by the President to represent a specific judicial circuit. The Attorney General shall call the first meeting of the Circuit Board within six months after the date of the enactment of this Act.

"(b) The Circuit Board shall elect, from among its members, one member to serve as Chairman. The Chairman shall represent the Circuit Board on the Council. The Circuit Board is authorized to appoint and fix the compensation of such employees as it determines necessary to carry out its duties under this Act.

"(c) Members of the Board shall receive compensation as established in 5 USC 5314, relating to Level III of the Executive Schedule, except that the Chairman shall receive compensation as established in 5 USC 5313, relative to level II of the Executive Schedule. Members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Board.

"(d) The Circuit Board is authorized to enter into contracts or other arrangements for goods or services, with public or private profit organizations, to assist it in carrying out its duties and functions under this Act.

"FUNCTIONS OF CIRCUIT BOARD

"SEC. 202. It shall be the function of the Circuit Board to formulate, promulgate, and oversee a national policy on the treatment of offenders under the jurisdiction of any court of the United States on the basis of a charge of having violated any of the laws of the United States. In carrying out such function, the Circuit Board shall, among other things—

"(1) establish and recommend sentencing guidelines and standards for the United States courts, and provide periodic review thereof;

"(2) establish guidelines and standards for United States courts in pretrial release, probation, parole, or other forms of release of individuals charged with an offense or of offenders;

"(3) hear appeals by offenders denied parole on the sole ground that a District Board deviated from the established national guidelines and standards established pursuant to clause (2) of this section;

"(4) assist and advise the Council in determining overall Federal correction policy;

"(5) assign to each member of the Board the responsibility of overseeing the direction and operation of the various District Boards within the circuit which such member represents; and

"(6) assign each member of the Board the responsibility of notifying the President of the United States of any vacancy on the various District Boards within the circuit which such member represents.

"REPORTS

"SEC. 203. The Board shall, not less than annually, make a written report to the Attorney General concerning the carrying out of its functions and duties under this Act.

"ESTABLISHMENT OF DISTRICT OF COLUMBIA COURT OF APPEALS OFFENDER DISPOSITION BOARD; COMPOSITION

"SEC. 204. (a) There is hereby established the District of Columbia Court of Appeals Offender Disposition Board, which shall be composed of five members appointed by the President of the United States, by and with the consent of the Senate, and who shall represent diverse backgrounds, including, but not limited

to, the fields of correction, psychiatry, psychology, sociology, law, medicine, education, and vocational training. Such members shall serve for terms of ten years, except that, of the members first appointed, one shall serve for a term of two years, one shall serve for a term of five years, one shall serve for a term of eight years, and two shall serve for terms of ten years, as designated by the President at the time of their appointment. The Attorney General shall call the first meeting of such Board within six months after the date of the enactment of this Act.

"(b) The District of Columbia Court of Appeals Offender Disposition Board shall elect, from among its members, one member to serve as Chairman. The Chairman shall represent the Board on the Council. The Board is authorized to appoint and fix the compensation of such employees as it determines necessary to carry out its duties under this Act.

"(c) Members of the Board shall receive compensation at the rate of $100 for each day on which they are engaged in the performance of the duties of the Board, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Board.

"(d) The Board is authorized to enter into contracts or other arrangements for goods or services, with public or private profit organizations, to assist it in carrying out its duties and functions under this Act.

"FUNCTION OF DISTRICT OF COLUMBIA COURT OF APPEALS OFFENDER DISPOSITION BOARD

"SEC. 205. It shall be the function of the District of Columbia Court of Appeals Offender Disposition Board to formulate, promulgate, and oversee a uniform policy on the treatment of offenders under the jurisdiction of any court of the District of Columbia on the basis of a charge of having violated any of the laws of the District of Columbia. In carrying out such function, the Board shall, among other things—

"(1) establish and recommend sentencing guidelines and standards for the courts of the District of Columbia, and provide periodic review thereof;

"(2) establish guidelines and standards for such courts in pretrial release, probation, parole, or other forms of release of individuals charged with an offense or of offenders;

"(3) hear appeals by offenders denied parole on the sole ground that the District of Columbia Board (established pursuant to section 302 of this Act) deviated from the established guidelines and standards established pursuant to clause (2) of this section;

"(4) assist and advise the Council in determining overall District of Columbia correction policy;

"(5) assign members of the District of Columbia Court of Appeals Offender Disposition Board the responsibility of overseeing the direction and operation of the District of Columbia Board; and

"(6) assign a member of the District of Columbia Court of Appeals Offender Disposition Board the responsibility of notifying the President of the United States of any vacancy on the District of Columbia Board.

"REPORTS

"SEC. 206. The District of Columbia Court of Appeals Offender Disposition Board shall, not less than annually, make a written report to the Attorney General concerning the carrying out of its functions and duties under this Act.

"TITLE III—DISTRICT COURT OFFENDER DISPOSITION BOARD; SUPERIOR COURT OF THE DISTRICT OF COLUMBIA OFFENDER DISPOSITION BOARD

"ESTABLISHMENT OF THE DISTRICT COURT OFFENDER DISPOSITION BOARD; COMPOSITION

"SEC. 361. (a) There is hereby established in each judicial district a District Court Offender Disposition Board (referred to in this Act as the "District Board"), which shall be composed of not less than five mmebers appointed by the President of the United States, in and with the advice and consent of the Senate, and representing diverse backgrounds, including but not limited to, the fields of correction, psychiatry, psychology, sociology, law, medicine, education, and vocational training. Such members shall serve terms of six years, and shall be eligible for reappointment. The Board shall elect, from among its members one

member to serve as Chairman. The Board may appoint and fix the compensation of such employees as it determines are necessary to carry out its duties under this Act. The Attorney General shall call the first meeting of each District Board.

"(b) Each member of a District Board shall be compensated in an amount equal to $——— per annum, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Board.

"(c) Each District Board may establish such units as it determines necessary, which may include an investigation unit, a pretrial evaluation unit, a presentence unit, a youthful offender unit, and a narcotics and alcoholic unit. Each unit shall consist of such members as shall be determined by the Board. Each unit, with the approval of the Board, shall be authorized to appoint and fix the compensation of such employees as it determines are necessary to carry out its duties.

"(d) Immediately following the arraignment of a person charged with a Federal offense, the case shall be assigned to the District Board, which shall—

"(1) investigate the defendant's background, family ties, relationship with the community, employment history, and the circumstances surrounding the alleged offense, and other information which it deems pertinent, and make such information available to the appropriate judicial officer or court, along with a recommendation as to the setting of bail;

"(2) recommend to the appropriate judicial officer or court, if indicated, mental observation, or medical observation for problems such as alcoholism, drug addiction, or other mental or physical disabilities; and

"(3) submit, within thirty days of arraignment, a written report to the counsel of record for such defendant, and the office of the United States attorney having jurisdiction over the case.

"(e) The reports shall set forth the findings and conclusions of the District Board, including its conclusions as to any physical, mental, social, economic, or other problems of the defendant and shall recommend whether and what type of diversion of the defendant from the criminal justice system of prosecution is desirable. The report shall be made part of the permanent record of the defendant's case.

"(f) The report shall be the basis for discussion between the United States attorney and counsel of record for the defendant at a formal precharge conference, during which the report and alternatives to prosecution shall be considered. If the United States attorney and counsel for the defendant agree that diversion of the defendant from the criminal prosecution system would be desirable, and an appropriate authorized diversion program exists, then the charges against the defendant shall be suspended for up to twelve calendar months, subject to the defendant agreeing to participate in that program. The Board shall file with the court a statement of the date the defendant has commenced participation in the program. The United States attorney shall make periodic reviews as to the progress of the defendant while participating in the program. If the United States attorney is not satisfied with the defendant's progress, he may resume prosecution of the charges by filing, within one year after the defendant commenced participation in the program, a statement of intention to resume prosecution, which shall include the reasons for resumption of prosecution. If the United States attorney does not file a timely statement of intention to resume prosecution of the charges against the defendant, the charges shall be permanently dismissed. The statement of intention by the United States attorney to resume prosecution shall be included in the record of the case.

"(g) If a defendant is prosecuted for, and convicted of, a Federal offense, the court shall refer the record of the case to the appropriate District Board for review and consideration prior to sentencing. The Board shall examine and review the record, the pretrial evaluation report and other pertienent information concerning the case, including the recommendations of counsel for the defendant. Within thirty days after receiving the record, the Board shall file a written report with the court, the counsel for the defendant, and the United States attorney. Such report shall include.

"(1) the sentence recommended by the Board, which may be a suspended sentence, probation, imprisonment, or any alternative authorized by law to imprisonment;

"(2) the reasons for the sentence recommended; and

"(3) if imprisonment is recommended—

"(A) the reason imprisonment is recommended (such as for reasons of punshment, deterrence or rehabilitation) and what alternatives were considered as inapplicable, and the reasons therefor;

"(B) the term of imprisonment recommended and the institution or facility in which the imprisonment is recommended to be carried out; and

"(C) the goals for the offender to attain while so imprisoned which, when attained, should entitle him to parole, but the goals may, from time to time, be revised by the District Board.

"(h) If the court determines not to follow the recommendations of the District Board, it shall so state in writing along with the reasons therefor, and the purposes and goals of its sentence.

"(i) The District Board shall carry out, with respect to a defendant who has been sentenced, the functions relating to probation, parole, or other form of release (as the case may be) transferred to the Board pursuant to section 401(a) of this Act. In carrying out those functions, the District Board shall hold an annual hearing with respect to each offender who has been sentenced to imprisonment. In the hearing, all pertinent information concerning the offender shall be reviewed with a view to determining the progress of the offender in attaining the goals established for him by the District Board. At the hearing the offender shall have the right to be represented by counsel, to submit evidence, and to cross examine witnesses. Within fourteen days following the conclusion of the hearing, the Board shall make its determination as to whether the offender should be released on parole or other authorized alternative action taken. A determination by the Board to authorize release on parole of an offender eligible for parole shall be accompanied by a statement of the conditions of parole. If the Board determines that an offender who is not eligible for parole should be released on parole, it shall recommend to the appropriate court that the sentence of the offender be reduced so that the offender may be so released, or that an authorized alternative disposition be made. Within fourteen days after the determination, the District Board shall submit to the offender and to the appropriate court a written report containing the decision of the Board and the reasons therefor, including the views of the Board with respect to the goals the offender has attained and the goals he has not yet attained.

"(j) A quorum for any hearing held pursuant to subsection (i) shall be not less than three members of the District Board.

"(k) The decision of the District Board may be appealed to the Circuit Board by the offender affected by the decision solely on the basis that the District Board, in conducting the hearing, failed to follow the standards and guidelines established by the Circuit Board pursuant to section 202(2) of this Act. Nothing in this section shall be construed as abridging the right of an offender to appeal a sentence to the Federal courts.

"The District Boards are authorized to enter into contracts or other arrangements for goods or services, with public or private profit organizations to assist them in carrying out its duties and functions under this Act.

"ESTABLISHMENT OF SUPERIOR COURT OF DISTRICT OF COLUMBIA OFFENDER DISPOSITION BOARD; COMPOSITION

SEC. 302. (a) There is hereby established in the District of Columbia the Superior Court of the District of Columbia Offender Disposition Board (referred to in this Act as the 'District of Columbia Board'), which shall be composed of not less than five members appointed by the President of the United States, by and with the advice and consent of the Senate, and representing diverse backgrounds, including, but not limited to, the fields of correction, psychiatry, psychology, sociology, law, medicine, education, and vocational training. Such members shall serve terms of six years, and shall be eligible for reappointment. The District of Columbia Board shall elect, from among its members, one member to serve as Chairman. The Board may appoint and fix the compensation of such employees as it determines are necessary to carry out its duties under this Act. The Attorney General shall call the first meeting of the District of Columbia Board.

"(b) Each member of the District of Columbia Board shall be compensated in an amount equal to $ ——— per annum, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses reasonably incurred in the performance of the duties of the Board.

"(c) Such Board may establish such units as it determines necessary, which may include an investigation unit, a pretrial evaluation unit, a presentence unit, a youthful offender unit, and a narcotics and alcohol unit. Each unit shall consist of such members as shall be determined by the Board. Each unit, with the

approval of the Board, shall be authorized to appoint and fix the compensation of such employees as it determines are necessary to carry out its duties.

"(d) Immediately following the arraignment of a person charged with an offense under the jurisdiction of the Superior Court of the District of Columbia, the case shall be assigned to the District of Columbia Board, which shall—

"(1) investigate the defendant's background, family ties, relationship with the community, employment history, and the circumstances surrounding the alleged offense, and other information which it deems pertinent, and shall make such information available to the appropriate judicial officer or court, along with a recommendation as to the setting of bail;

"(2) recommend, to the appropriate judicial officer or court, if indicated, mental observation, or medical observation for problems such as alcoholism, drug addiction, or other mental or physical disabilities; and

"(3) submit, within thirty days of arraignment, a written report to the counsel of record for such defendant, and the attorney for the Government having jurisdiction over the case.

"(e) The report shall set forth the findings and conclusions of the Board, including its conclusions as to any physical, mental, social, economic, or other problems of the defendant and shall recommend whether and what type of diversion of the defendant from the criminal justice system of prosecution is desirable. The report shall be made part of the permanent record of the defendant's case.

"(f) The report shall be the basis for discussion between the attorney for the Government and counsel of record for the defendant at a formal precharge conference, during which the report and alternatives to prosecution shall be considered. If the attorney for the Government and counsel for the defendant agree that diversion of the defendant from the criminal prosecution system would be desirable, and an appropriate authorized diversion program exists, then the charges against the defendant shall be suspended for up to twelve calendar months, subject to the defendant agreeing to participate in that program. The Board shall file with the court a statement of the date the defendant has commenced participation in the program. The attorney for the Government shall make periodic reviews as to the progress of the defendant while participating in the program. If the attorney for the Government is not satisfied with the defendant's progress, he may resume prosecution of the charges by filing, within one year after the defendant commenced participation in the program, a statement of intention to resume prosecution, which shall include the reasons for resumption of prosecution. If the attorney for the Government does not file a timely statement of intention to resume prosecution of the charges against the defendant, the charges shall be permanently dismissed. The statement of intention by the attorney for the Government to resume prosecution shall be included in the record of the case.

"(g) If a defendant is prosecuted for, and convicted of, an offense under the jurisdiction of the Superior Court of the District of Columbia, the court shall refer the record of the case to the appropriate District of Columbia Board for review and consideration prior to sentencing. The Board shall examine and review the record, the pretrial evaluation report and other pertinent information concerning the case, including the recommendations of counsel for the defendant. Within thirty days after receiving the record, the Board shall file a written report with the court, the counsel for the defendant, and the attorney for the Government. Such report shall include—

"(1) the sentence recommended by the Board, which may be a suspended sentence, probation, imprisonment, or any alternative authorized by law to imprisonment;

"(2) the reason for the sentence recommended; and

"(3) if imprisonment is recommended—

"(A) the reason imprisonment is recommended (such as for reasons of punishment, deterrence or rehabilitation) and what alternatives were considered as inapplicable, and the reasons therefor;

"(B) the term of imprisonment recommended and the institution or facility in which the imprisonment is recommended to be carried out; and

"(C) the goals for the offender to attain while so imprisoned which, when attained, should entitle him to parole, but the goals may, from time to time, be revised by the District of Columbia Board.

"(h) If the court determines not to follow the recommendations of the District of Columbia Board, it shall so state in writing along with the reasons therefor, and the purposes and goals of its sentence.

"(i) The District of Columbia Board shall carry out the functions transferred to the Board pursuant to section 401(b) of this Act. In carrying out those functions, the District of Columbia Board shall hold an annual hearing with respect to each offender who has been sentenced to imprisonment. In the hearing, all pertinent information concerning the offender shall be reviewed with a view to determining the progress of the offender in attaining the goals established for him by the District of Columbia Board. At the hearing the offender shall have the right to be represented by counsel, to submit evidence, and to cross examine witnesses. Within fourteen days following the conclusion of the hearing, the Board shall make its determination as to whether the offender should be released on parole or other authorized alternative action taken. A determination by the Board to authorize release on parole of an offender eligible for parole shall be accompanied by a statement of the conditions of parole. If the Board determines that an offender who is not eligible for parole should be released on parole, it shall recommend to the appropriate court that the sentence of the offender be reduced so that the offender may be so released, or that an authorized alternative disposition be made. Within fourteen days after the determination, the District of Columbia Board shall submit to the offender and to the appropriate court a written report containing the decision of the Board and the reasons therefor, including the views of the Board with respect to the goals the offender has attained and the goals he has not yet attained.

"(j) A quorum for any hearing held pursuant to subsection (i) shall be not less than three members of the District of Columbia Board.

"(k) The decision of the District of Columbia Board may be appealed to the District of Columbia Court of Appeals Offender Disposition Board by the offender affected by the decision solely on the basis that the District of Columbia Board, in conducting the hearing, failed to follow the standards and guidelines established by the District of Columbia Court of Appeals Offender Disposition Board pursuant to section 205(2) of this Act. Nothing in this section shall be construed as abridging the right of an offender to appeal a sentence to the appropriate courts.

"(l) The District of Columbia Board is authorized to enter into contracts or other arrangements for goods or services, with public or private nonprofit organizations to assist it in carrying out its duties and functions under this Act.

TITLE IV—TRANSFER OF FUNCTIONS

"PAROLE: PROBATION

"SEC. 401. (a) There are hereby transferred to the District Boards established by this Act all functions which were carried out immediately before the effective date of this section—

"(1) by the District of Columbia Board of Parole:

"(2) by any United States court relating to the appointment and supervision of probation officers;

"(3) by the Attorney General relating to the prescribing of duties of probation officers; and

"(4) by the Director of the Administration Office of the United States Court relating to probation officers and the operation of the probation system in the United States courts.

"(b) There are hereby transferred to the District of Columbia Board established by this Act all functions which were carried out immediately before the effective date of this section—

"(1) by the District of Columbia Board of Parole:

"(2) by any District of Columbia court relating to the appointment and supervision of probation officers;

"(3) by the District of Columbia Bail Agency; and

"(4) by the Offender Rehabilitation Service of the District of Columbia Public Defender Service.

"MISCELLANEOUS

"SEC. 402. (a) With respect to any function transferred by this title and exercised after the effective date of this section, reference in any other Federal or District of Columbia law, rule, or regulation to any Federal or District of Columbia instrumentality or officer from which or whose functions are transferred by this Act shall be deemed to mean the instrumentality or officer in which or whom such function is vested by this Act.

"(b) In the exercise of any function transferred by this Act, the appropriate officer of the District of Columbia Public Defender Board to which such functions were so transferred shall have the same authority as that vested in the officer exercising such function immediately preceding its transfer and such officer's actions in exercising such functions shall have the same force and effect as when exercised by such officer having such function prior to its transfer by this title.

"(c) All personnel (other than the members of the Board of Parole and the District of Columbia Board of Parole), assets, liabilities, property and records as are determined by the Director of the Office of Management and Budget to be employed, held or used primarily in connection with any function transferred by this title are hereby transferred to the District Boards or the District of Columbia Board in such manner and to such extent as the said Director shall prescribe. Such personnel shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions.

"(d) Effective on the effective date of section 401 of this Act, the United States Board of Parole, the District of Columbia Board of Parole, the District of Columbia Bail Agency and the Offender Rehabilitation Service of the District of Columbia Public Defender Service shall lapse.

"(e) As used in this Act, the term 'function' includes powers and duties.

"EFFECTIVE DATE

"SEC. 403. Sections 102, 103, 202, 205, subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 301, subsections (d), (e), (f), (g), (h), (i), (j) and (k) of section 302 and sections 401 and 402 of this Act shall take effect upon the expiration of the one-hundred-and-twenty-day period following the date of the enactment of this Act. All other provisions of this Act shall take effect upon the date of its enactment.

"DEFINITION

"SEC. 404. As used in this Act, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

"AUTHORIZATIONS

"SEC. 405. (a) On and after the date of the enactment of this Act, all moneys received by any court of the United States or of the District of Columbia as fines, penalties, forfeitures and otherwise shall be deposited in the Treasury. Such moneys received from the courts of the United States shall be deposited to the credit of Federal Circuit Offender Disposition Board, and such moneys so received from the courts of the District of Columbia shall be deposited to the credit of the District of Columbia Court of Appeals Offender Disposition Board. All such moneys shall be available for carrying out the purposes of this Act.

"(b) There are authorized to be appropriated such sums as may be necessary in addition to those available pursuant to subsection (a) of this section to carry out the provisions of this Act.

"MISCELLANEOUS

"SEC. 406. In the administration of title I of the Omnibus Crime Control and Safe Streets Act of 1968, each State shall receive only —— per centum of the grants in any fiscal year commencing after June 30, 1973, to which it would otherwise be entitled, if the Attorney General determines that such State has failed to reorganize its criminal justice system in a manner comparable to that provided for the Federal criminal justice system by titles II and III of this Act. The Law Enforcement Assistance Administration is authorized and directed to determine the extent to which specific grant programs will be reduced in any fiscal year for any State in order to comply with the requirements of this section."

[S. 3674, 92d Cong., second sess.]

A BILL Relating to the parole of certain Federal offenders

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the second sentence of section 4205 of title 18, United States Code, is amended to read as follows: "The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under such warrant, but

the amount of time which such prisoner shall be required to serve as a result of his retaking shall be reduced by a period of time equal to that period commencing with his release by reason of his parole and ending with the date of the commission of the violation for which parole was revoked."

(b) The third paragraph of section 4207 of title 18, United States Code, is amended by inserting a comma immediately after "prisoner" and the following: "subject to the provisions of section 4205 of this title,".

SEC. 2. The provisions of this Act shall be applicable in the case of any person who, on or after the date of its enactment, is on parole or is paroled pursuant to the provisions of chapter 311, of title 18, United States Code.

Senator BURDICK. Our first witness this morning is Hon. Robert W. Kastenmeier, chairman, House Judiciary Subcommittee No. 3.

I am pleased to welcome you to this committee, Mr. Kastenmeier.

STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF WISCONSIN

Mr. KASTENMEIER. Mr. Chairman, I wish to express my appreciation for the opportunity to testify today before the Subcommittee on National Penitentiaries of the Senate Judiciary Committee. As chairman of the analogous Judiciary Subcommittee in the House, I am of course very much aware of the excellent work and leadership being provided by you and your fellow members, and I offer my commendations.

You are today beginning hearings concerning several bills regarding parole. Having recently concluded 19 days of hearings on this subject, and now working on marking up the legislation which was considered in these hearings, I can assure you that you have entered a most complex and disturbing aspect of the corrections system.

In the past year or so, my subcommittee has visited State penal institutions in California, Wisconsin, Massachusetts, Illinois, and Michigan. We have seen the Federal institutions at Allenwood and Lewisburg, and the Lorton complex of the District of Columbia. The subcommittee has conducted eight sets of hearings, three of them here in Washington, and the rest in the field. Several consistent themes have run throughout our visits, our hearings, and our meetings and correspondence with both inmates and correctional officials.

One of these is that the parole system—Federal and State—is one of the prime causes, perhaps the prime cause, of unrest in the prisons.

Very simply, parole is viewed as the avenue to the street. And virtually every man and woman in prison wants to be out. Thus, to them, parole is the concern which dominates their thoughts and their activities. Because of this, and because of the role which parole has assumed in the corrections system, parole boards have, with some exceptions, become hated and feared creatures. In general, they are vested with enormous discretionary power, which they exercise in secret, without being accountable to anyone—executive, prisoner, court, or citizen.

I know this is a strong indictment of what many people regard as in fact a palliative device—a mechanism to extend to prisoners, as a matter of grace, the opportunity to get out of prison before serving their full sentence. But I think that at least on the basis of the record we have developed, this indictment is warranted.

It seems to me that our function as legislators is to render that indictment without merit. To that end, I have introduced H.R. 13118,

the Parole Improvement and Procedures Act of 1972, which has been cosponsored by three of my colleagues on my subcommittee.

One of the chief lessons of our hearings, as it will be one of the major themes, I would imagine, of your hearings, is that any essay into this area must be a very careful one. I say this because we have faced a most perplexing problem.

On the one hand, parole is clearly an integral component of the corrections system. The authors of the Task Force Report on Corrections of the President's Commission on Law Enforcement and the Administration of Justice reported, in 1967, that "more than 60 percent of adult felons for the Nation as a whole—are released on parole prior to the expiration of the maximum term of their sentences."

Yet, on the other hand, there is the very real possibility that parole is a barren concept, and no matter what we attempt in the way of improvement, we will really be doing no more than dressing up a sterile creature in newer and nicer clothing, so to speak.

I want to discuss this possible paradox a little more fully, because I believe it is crucial in the determination of what road is taken, both by my subcommittee, and by yours in these very important hearings which you are beginning today.

A basic premise of parole is that there is an individual—the prisoner—who at some point becomes suitable for release from prison by virtue of changes in his behavior patterns or beliefs or abilities. The second basic premise is that a certain body—the parole board—can determine when the prisoner is ready; that is, when this change in him has taken place. The prisoner is, in effect, a patient, and the board is the doctor. The doctor diagnoses the patient, pronounces him either still ill or now cured and, dependent upon its diagnosis, keeps him institutionalized or sends him forth into the world.

Were these premises founded in fact, or grounded on solid confirming data, we might well conclude that all the problems that now exist with parole derive from maladministration or some other merely mechanical defect. Sadly, there are indeed few facts or data to sustain such a conclusion.

First, the assumption that prisons are institutions of positive change is very questionable. I don't have to recite the familiar indictments of prisons, as they now exist, as counterproductive. But, I do think it worth very seriously questioning whether institutions of forced confinement, even structured and run in the optimally prescribed manner, can ever be institutions of positive change. Granted, no such optimal institution has ever been tried. But, nevertheless, we certainly must consider whether coerced change can produce rehabilitation, or be equated with it. Human beings are complex creatures, and certainly in our society, which continually invokes the tenets of individualism, the remaking of individuals, whether through forced confinement or otherwise, is a most problematical venture.

Second, we must very seriously question the notion that parole boards can determine when a man is ready to be released. That notion presupposes that board members have some special ability to know what another human being—in this case, a prisoner—is really about. I am sure that you know, as do I, people who have spent years lying on a psychiatrist's couch, at enormous expense, in the search for knowledge and understanding. Even after years, that search is not completely successful.

Yet parole boards claim that they can, in a few minutes, meet a man, converse with him, and on the basis of this—plus his file—know whether he has undergone some change which renders him suitable for release into the free world. Surely, that is a dubious contention, at best. Certainly, it is one which no professionally trained interviewer—such as Dr. Willard Gaylin, a noted psychiatrist who testified before my subcommittee—would seriously proffer.

Where, then, are we? The process of parole presupposes, first, that forced confinement can produce change for the better; second, that that change is perceptible within the walls of an unnatural society—the prison; and third, that parole board members have the ability to perceive that change and assess its quality and quantity. All of these suppositions find little substantiation—either from experience or from objective study.

Despite all, I am not prepared to dispense with parole as an element of the corrections continuum. I am not because I think the alternative would be even worse. As you probably know, sentences are longer in the United States than in virtually any other country in the Western World. As you also probably know, what few studies there are—and I have confirmed this in discussion with various prison officials—indicate that incarceration beyond 3 or 4 or 5 years, at the most, succeeds only in producing deterioration in the prisoners. Until sentences are shortened—and equalized—a necessary mechanism in our corrections process is parole.

But we must recognize that mechanism for what it really is—not some hodge-podge of mystical plumbing of the depths of men's souls—but rather, deferred sentencing. Rather than the judge sentencing a man to a fixed number of years in prison, he passes the buck to the parole board, in effect saying, "I'll set the maximum he can stay in; you figure out how soon before that he can be let out."

Viewing it in this light—and I believe this is the most appropriate way in which to view parole—my conclusion is that we must introduce into the parole system due process. Not because due process completely corrects what are the very likely faulty premises involved in the parole process, but because due process opens up the doors. It opens them up to the public. It opens them up to the prisoner and to his attorney. And that opening up cannot but help to cut down the parole process discretion; it cannot help but make it accountable; it cannot help but prevent it from committing—usually unwittingly—the abuses which it now perpetrates.

I know that the introduction of due process is not the major thrust of some of the bills before this subcommittee.

Some of them, such as S. 3185, largely concern structure—reconstituting the U.S. Board of Parole and providing more Board personnel. Both of these steps are indeed worthwhile. H.R. 13118, which I have introduced, also provides for increased personnel, and it, too, contemplates a restructuring of the Board, by removing it from the Department of Justice. And, as our markup proceeds, it appears that our final product will provide for regionalization of the Board—a result very largely due to the persuasive presentation of my colleague from Illinois, Tom Railsback, who is the ranking minority member of Subcommittee No. 3, and who is the sponsor of the House counterpart of S. 3185.

However, restructuring and increased manpower only mean there is a differently constituted body, possessing more personnel, but still engaged in a system of secrecy, and still armed with enormous and virtually unchecked discretion. Thus, I contend that the infusion of due process into the parole process is essential if we are to indeed accomplish anything more than dressing up a very seriously flawed system.

Two of the bills before you—S. 2955 and S. 3674—concern the crediting of clean street time to parolees who are violated. I think S. 3674, providing full credit, as does H.R. 13118, is indeed a sorely needed remedy. Presently, a parolee receives no credit for the time he has done on the street, and thus, if his parole is revoked, he may serve years beyond the date of his maximum sentence.

Your own legislation, Mr. Chairman, is a most worthwhile move in the direction of the due process system which I urge. However, I believe that there are some further steps which could be taken, and thus I should like to conclude my testimony by briefly outlining H.R. 13118, which does, I believe, take those additional steps.

SHIFTING OF THE BURDEN

The National Commission on Reform of the Federal Criminal Laws recommended that the burden of parole release be shifted from the parolee to the parole board. This is, rather than the parolee having to justify why he should be released, the board is to have the burden of justifying why he should not be. H.R. 13118 adopts this concept, and I think it is an essential one.

The rhetoric of judicial decisions concerning parole is that it is a matter of grace, granted by the executive in its discretion. That rhetoric is beginning to be altered by reality, I believe. Increasingly, students of parole are coming to see that parole is in fact an integral component of corrections—in fact, an essential component when it is used to relieve institutional overcrowding. Its implications for the man or woman are enormous, affecting years of his or her life. And in light of the fact that parole is really a form of deferred sentence, surely the rhetoric of "grace" no longer serves a useful purpose.

Unless the Board can justify retention of a prisoner in incarceration, he should be released. Now, certainly, I do not want to hamstring the Board; it must have discretion. But it must employ that discretion in the context of accountability and it must do this by justifying its negative actions, rather than by the often ill-equipped prisoner proving that it should take the positive step of grant of parole.

DUE PROCESS AT THE PAROLE DETERMINATION HEARING

H.R. 13118 infuses due process into the parole determination hearing by means of providing representation by counsel, disclosure of files, and a full statement of the reasons for the Board's determination. I do think that, at the present time, a full-blown adversarial hearing would not be appropriate for the parole determination hearing. But, at a minimum, the prisoner must be allowed to be represented by an individual who, in a given case, may be more articulate or experienced than him; the prisoner must know what is in the files concerning him, so that he can point out errors or dispute subjective statements therein;

and he must be apprised of why the Board has made the decision it has, so that he can remedy those defects which accounted for his denial of parole.

DUE PROCESS AT PAROLE REVOCATION HEARINGS

On June 29, the Supreme Court issued its opinion in *Morrissey* v. *Brewer*, which concerned State parole revocation cases. I think that decision laid to rest any argument that due process is inappropriate in revocation situations.

RIGHT OF APPEAL

Ultimately, no system of due process is going to produce improvement unless that system entails accountability. An agency can follow all the rules, yet if there is no one to look over its shoulder to check its actions, it can perpetuate old wrongs under the guise of new procedures. Thus, H.R. 13118 provides for administrative appeals of parole denials and parole revocations, and appeals to the courts. Without review, I think there is little point in providing better procedures at the lower level.

THE STATES

Some 10 percent of the men and women who are in prison are incarcerated in Federal institutions. The other 90 percent—about 180,000 individuals—are confined in State facilities. Thus, while improvement of the Federal parole system is most important, this action will do very little to remediate State conditions, save by setting a model for the States to follow, if they so choose.

Yet, all the evils of which the Federal system is accused equally exist within the State systems. In Texas, for example, the prisoner is not even allowed a parole determination hearing. In other States, hearings are perfunctory exercises. In few States is representation by counsel allowed.

Consequently, H.R. 13118 imposes a condition precedent to the receipt by the States of LEAA corrections grants: that is, the establishment of due process parole systems. I think this is essential if we are to make prison reform a national endeavor.

Once again, I appreciate the opportunity you have provided me to appear here today. I look forward to a long and fruitful joining of our mutual efforts in bringing about what I know is our jointly shared desire for real and meaningful reform of our presently abysmal corrections process.

Thank you.

Senator BURDICK. Thank you, Mr. Kastenmeier.

You made a great contribution to us this morning and we are pleased to know that we are moving on this front also in the House.

I just have a few questions, and I note in your statement on page 4 at the bottom of the page, you say:

> Secondly, we must very seriously question the notion that parole boards can determine when a man is ready to be released. That notion presupposes that board members have some special ability to know what another human being—in this case, a prisoner—is really about.

On page 6, you talk about due process, "And that opening up cannot but help to cut down the parole process' discretion;" And again, on

pages 7 and 8 you refer to the discretion. How can we have a parole system operate where a man has an indeterminate, or a definite time, how can we shorten that without using discretion?

Mr. KASTENMEIER. Well, of course, I have indicated we do retain discretion. What I was suggesting on page 4 was that presently the system provides for such minimum review of a prisoner's record—at least in many cases—that one cannot help but question whether the Board can properly exercise its discretion.

The bill that we are considering, providing for regionalization, additional personnel, in disclosure of files, a due process system, infuses into the system those elements which we think will enhance the Board's ability to properly exercise its discretion, replacing the 5 or 10-minute interviews that are now taking place.

These elements will permit them to exercise discretion, and it will enable the Board's decision to be understood so that they will be accepted by the prisoner.

I think that both in terms of society and prisons——

Senator BURDICK. What you are saying is that we need legislation this time to make it better, a better frame for the better exercise of discretion?

Mr. KASTENMEIER. Yes. I would say that that is correct.

Senator BURDICK. Now, you talk about review. Are you talking about in-house review or are you talking about our regular judicial review?

Mr. KASTENMEIER. I am talking about judicial review. First, I am talking about in-house review in the Federal system; the Regional Boards decision will, under certain circumstances, be appealed to a National Board.

We have set up, at least tentatively, a series of Regional Boards, whose members are full Board members, and who are assisted by examiners. Their determinations can be appealed to a National Board in Washington. We are doing this to try to enable each case to be handled better, and to localize this determination; to specialize it, in a sense. We think that will enhance the quality of the original determination.

And then there would be an appeals procedure.

Senator BURDICK. Well, I am concerned with the theory of what we must proceed under. A man has breached the law. He has received, let's say, 5 years—a 5-year sentence. Does he then have, before that sentence is served, a legal right to appear when we consider an erroneous decision has been made? Does he have a legal right?

Mr. KASTENMEIER. Yes. I would say he does. We have determined that he would have a legal right to do that. That does not mean he becomes eligible for parole, of course; these procedural rights come into play once he becomes eligible for parole. Once he becomes eligible for parole and has a hearing, then he can appeal if the decision is adverse.

Senator BURDICK. Would you adhere—or would you change the rules we now have, that when you appeal from an order of an administrator—an order is based upon discretion—would you overturn that order, unless abuse of discretion was shown?

Mr. KASTENMEIER. Well, that is a term we do not use. In the bill we are marking up, one could, I suppose, apply such a standard.

Senator BURDICK. That is the legal standard today.

Mr. KASTENMEIER. But I am speaking in terms of parole.

Senator BURDICK. In other words, what guidelines do you have to

go by for any other standard than administrative guidelines, even in a case where you have had a parole decision, you would be using discretion in denying the parole. Are you following me?

Mr. KASTENMEIER. Yes. I would say that is a proper assessment.

Senator BURDICK. One more question. Are you aware of the voluminous amount of writs of habeas corpus which are being prepared under their own power, so to speak?

Mr. KASTENMEIER. Yes, sir.

Senator BURDICK. Are you aware that the great majority of them are without merit?

Mr. KASTENMEIER. Of course.

Senator BURDICK. And you are aware that the prisoner has time on his hands and he is without the use of the library, and this is the basis for his preparing the writs. What would you anticipate the load to be in cases that you have a legal right of appeal and the number of cases that might be handled by our courts?

Mr. KASTENMEIER. That would be determined by how many were presently being considered for parole; how many were denied parole, and whether, having been denied parole, how many individuals wanted to appeal the decision of the Regional Board of Parole to the National Board of Parole. I suspect that the National Board would have a fair number of appeals, but probably fewer than the total number of initial cases decided by the Regional Board.

Looking at the total caseload, the Board has today, I think it would be manageable, even though many of them would be—most of them, generally—would probably be without merit.

Senator BURDICK. Would you have any method of setting up a screening system for the ones that would have merit, and those which would be unmeritorious?

Mr. KASTENMEIER. That I would be inclined to leave out of the statute; I would be inclined to leave that to the Board, itself. I think the National Board would be able to set up an appropriate system.

Senator BURDICK. Would you seriously object to it if we tailored legislation limiting the appeals to in-house, rather than judicial appeals?

Mr. KASTENMEIER. I think that is probably the likely outgrowth of this legislation. I think that would be a step forward, as a matter of fact.

Senator BURDICK. Well, I enjoy visiting with you, Congressman. We go back to 1958, the 1958 elections.

Mr. KASTENMEIER. We both entered the Congress at the same time, and we were both House Members at the same time—the same year; I remember it very warmly.

Senator BURDICK. Thank you, very much.

Just a minute. The staff has some questions.

Do you feel that the Parole Board should have the subpoena to require candidates to testify, and the parole witnesses to have people testify at the parole hearings?

Mr. KASTENMEIER. Yes, I do.

Senator BURDICK. Both on behalf of the Government and on behalf of the defendant?

Mr. KASTENMEIER. Yes, I think that would be an appropriate power.

Senator BURDICK. Do I understand correctly that you do not feel

that lawyers should, or would be required to appear, or note their appearance before the Board if the inmate has someone who will testify, or someone who is an advocate?

Mr. KASTENMEIER. That is right. We think that a number of individuals, other than lawyers, would be competent to assist. This is not the formal adversarial proceeding that would be equated with the courts. Therefore, I do not think that only attorneys should be allowed to aid the petitioner; I do not think that person should be a lawyer.

As a matter of fact, it might well be an officer in the institution itself. Someone who is quite familiar with the prisoner's case. The point is not to make a legalistic argument; it is merely, rather, to insure that the prisoner, if he wishes, has some representative in whom he has confidence to deal with this.

Senator BURDICK. You would say he wouldn't necessarily have a lawyer, but suppose he requested a lawyer?

Mr. KASTENMEIER. I would say "Yes."

Senator BURDICK. Why do you feel the parole agency should be independent of the Department of Justice?

Mr. KASTENMEIER. Well, I think that the Board ought to have independent judgment. It ought not to be political or partisan. It ought not to be in any sense influenced externally by the Department of Justice or by any other agency. It ought to be independent in the full sense of the word.

Presently it is not independent. It is still within the power of the Department of Justice. There has been some criticism of this; perhaps the criticism is not major but, nonetheless, in terms of the new role that we see, the Board is assuming, we think independence of that Board is an essential component in its ability to handle itself administratively. Its separation from the Department of Justice would aid, I think, in its mission.

Senator BURDICK. And in your bill in the House, how do you constitute the Board? Who makes the appointments?

Mr. KASTENMEIER. These are Presidential appointments, as I recall. I would have to be somewhat guarded, because we are still in the process of markup, but it is my recollection that they are appointed by the President with the advice and the consent of the Senate, and we recommend that the membership reflect the racial and ethnic composition of the Federal prison population.

Actually, we used several guidelines as to the type of individuals in terms of experience.

We provide a national board of seven members for 6-year terms, not eligible for reappointment more than one time. And we have provided for regional boards of three members—five regional boards of three members each.

Senator BURDICK. This would be a purely independent agency?

Mr. KASTENMEIER. Yes, sir.

Senator BURDICK. That is independent—as EPA?

Mr. KASTENMEIER. As what, Mr. Chairman?

Senator BURDICK. Completely independent, not part of any other department?

Mr. KASTENMEIER. Yes. It would be as independent as any other independent agency that we have in the Federal Government.

Senator BURDICK. Well, thank you again, Congressman.

Senator Mathias, do you have any questions?

Senator MATHIAS. No. I would just like to express my very warm welcome to this committee. I know Congressman Kastenmeier because we have served in the House a number of years, and his roles have always had great weight with me on the subject.

Mr. KASTENMEIER. It was a great honor to serve on the House Judiciary Committee with the gentleman from Maryland.

Senator BURDICK. Thank you very much.

Mr. KASTENMEIER. Thank you.

Senator BURDICK. The next witness is Maurice Sigler, Chairman, U.S. Board of Parole.

(Full prepared statement by Congressman Robert W. Kastenmeier appears at this time:)

TESTIMONY OF REPRESENTATIVE ROBERT W. KASTENMEIER (DEMOCRAT, WISCONSIN)

Mr. Chairman: I wish to express my appreciation for the opportunity to testify today before the Subcommittee on National Penitentiaries of the Senate Judiciary Committee. As Chairman of the analogous Judiciary Subcommittee in the House, I am of course very much aware of the excellent work and leadership being provided by you and your fellow members and I offer my commendations.

You are today beginning hearings concerning several bills regarding parole. Having recently concluded 19 days of hearings on this subject, and now working on marking up the legislation which was considered in these hearings, I can assure you that you have entered a most complex disturbing aspect of the corrections system.

In the past year or so, my Subcommittee has visited State penal institutions in California, Wisconsin, Massachusetts, Illinois, and Michigan. We have seen the Federal institutions at Allenwood and Lewisburg, and the Lorton Complex of the District of Columbia. The Subcommittee has conducted 8 sets of hearings, three of them here in Washington, and the rest in the field. Several consistent themes have run throughout our visits, our hearings, and our meetings and correspondence with both inmates and correctional officials.

One of these is that the parole system—Federal and State—is one of the prime causes, perhaps THE prime cause, of unrest in the prisons.

Very simply, parole is the avenue to the street. And virtually every man and woman in prison wants to be out. Thus, to them, parole is the concern which dominates their thoughts and their activities. Because of this, and because of the role which parole has assumed in the corrections system, parole boards have, with some exceptions, become hated and feared creatures. In general, they are vested with enormous discretionary power, which they exercise in secret, without being accountable to anyone—executive, prisoner, court, or citizen.

I know this is a strong indictment of what many people regard as in fact a palliative device—a mechanism to extend to prisoners, as a matter of grace, the opportunity to get out of prison before serving their full sentence. But I think that, at least on the basis of the record we have developed, this indictment is warranted.

It seems to me that our function as legislators is to render that indictment without merit. To that end, I have introduced H.R. 13118, the Parole Improvement and Procedures Act of 1972, which has been cosponsored by three of my colleagues on my subcommittee.

One of the chief lessons of our hearings, as it will be one of the major themes, I would imagine, of your hearings, is that any essay into this area must be a very careful one. I say this because we have faced a most perplexing problem. On the one hand, parole is clearly an integral component of the corrections system. The authors of the Task Force Report on Corrections of the President's Commission on Law Enforcement and the Administration of Justice reported, in 1967, that "more than 60 percent of adult felons for the Nation as a whole—are released on parole prior to the expiration of the maximum term of their sentences." Yet, on the other hand, there is the very real possibility that parole is a barren concept, and no matter what we attempt in the way of improvement, we will really be doing no more than dressing up a sterile creature in newer and nicer clothing, so to speak.

I want to discuss this possible paradox a little more fully, because I believe it is crucial in the determination of what road is taken, both by my subcommittee,

and by yours in these very important hearings which you are beginning today.

A basic premise of parole is that there is an individual—the prisoner—who at some point becomes suitable for release from prison by virtue of changes in his behavior patterns or beliefs or abilities. The second basic premise is that a certain body—the parole board—can determine when the prisoner is ready; that is, when this change in him has taken place. The prisoner is in effect a patient, and the board is the doctor. The doctor diagnoses the patient, pronounces him either still "ill" or now cured, and dependent upon its diagnosis, keeps him institutionalized or sends him forth into the world.

Were these premises founded in fact, or grounded on solid, confirming data, we might well conclude that all the problems that now exist with parole derive from maladministration or some other merely mechanical defect. Sadly, there are indeed few facts or data to sustain such a conclusion.

First, the assumption that prisons are institutions of positive change is very questionable. I don't have to recite the familiar indictments of prisons, as they now exist, as counter-productive. But, I do think it worth very seriously questioning whether institutions of forced confinement, even structured and run in the optimally-prescribed manner, can ever be institutions of positive change. Granted, no such "optimal" institution has ever been tried. But, nevertheless, we certainly must consider whether coerced change can produce rehabilitation, or be equated with it. Human beings are complex creatures, and certainly in our society, which continually invokes the tenets of individualism, the "remaking" of individuals, whether through forced confinement or otherwise, is a most problematical venture.

Secondly, we must very seriously question the notion that parole boards can determine when a man is ready to be released. That notion presupposes that board members have some special ability to know what another human being—in this case, a prisoner—is really about. I am sure that you know, as do I, people who have spent years lying on a psychiatrist's couch, at enormous expense, in the search for knowledge and understanding. Even after years, that search is not completely successful.

Yet parole boards claim that they can, in a few minutes, meet a man, converse with him, and on the basis of this—plus his file—know whether he has undergone some change which renders him suitable for release into the free world. Surely, that is a dubious contention, at best. Certainly, it is one which no professionally trained interviewer—such as Dr. Willard Gaylin, a noted psychiatrist who testified before my Subcommittee—would seriously proffer.

Where, then, are we? The process of parole presupposes that forced confinement can produce change for the better; second, that that change is perceptible within the walls of an unnatural society—the prison, and third, that parole board members have the ability to perceive that change and assess its quality and quantity. All of these suppositions find little substantiation—either by experience or by objective study.

Despite all, I am not prepared to dispense with parole as an element of the corrections continuum. I am not because I think the alternative would be even worse. As you probably know, sentences are longer in the United States than in virtually any other country in the Western world. As you also probably know, what few studies there are—and I have confirmed this in discussion with various prison officials—indicate that incarceration beyond 3 or 4 or 5 years at the most succeeds only in producing deterioration in the prisoner. Until sentences are shortened—and equalized—a necessary mechanism in our corrections process is parole.

But we must recognize that mechanism for what it really is—not some hodgepodge of mystical plumbing of the depths of men's souls—but rather, deferred sentencing. Rather than the judge sentencing a man to a fixed number of years in prison, he passes the buck to the parole board, in effect saying, "I'll set the maximum he can stay in: you figure out how soon before that he can be let out."

Viewing it in this light—and I believe this is the most appropriate manner to view parole—my conclusion is that we must introduce into the parole system due process. Not because due process completely corrects what are the very likely faulty premises involved in the parole process, but because due process opens up the doors. It opens them up to the public. It opens them up to the prisoner and to his attorney. And that opening-up cannot but help to cut down the parole process' discretion; it cannot help but make it accountable; it cannot help but prevent it from committing—usually unwittingly—the abuses which it now perpetrates.

I know that the introduction of due process is not the major thrust of some of the bills before this Subcommittee. Some of them, such as S. 3185, largely concern structure—reconstituting the United States Board of Parole and providing more Board personnel. Both of these steps are indeed worthwhile. H.R. 13118, which I have introduced, also provides for increased personnel, and it too contemplates a restructuring of the Board, by removing it from the Department of Justice. And, as our mark-up proceeds, it appears that our final product will provide for regionalization of the Board—a result very largely due to the persuasive presentation of my colleague from Illinois, Tom Railsback, who is the ranking minority member of Subcommittee No. 3, and who is the sponsor of the House counterpart of S. 3185.

However, restructuring and increased manpower only mean there is a differently constituted body, possessing more personnel, but still engaged in a system of secrecy, and still armed with enormous and virtually unchecked discretion. Thus, I contend that the infusion of due process into the parole process is essential if we are to indeed accomplish anything more than dressing up a very seriously flawed system.

Two of the bills before you—S. 2955 and S. 3674—concern the crediting of clean street time to parolees who are violated. I think S. 3674, providing full credit, as does H.R. 13118, is indeed a sorely needed remedy. Presently, a parolee receives no credit for the time he has done on the street, and thus, if his parole is revoked, he may serve years beyond the date of his maximum sentence.

Your own legislation, Mr. Chairman, is a most worthwhile move in the direction of the due process system which I urge. However, I believe that there are some further steps which could be taken, and thus I should like to conclude my testimony by briefly outlining H.R. 13118, which does, I believe, take those additional steps.

SHIFTING OF THE BURDEN

The National Commission on Reform of the Federal Criminal Laws recommended that the burden of parole release be shifted from the parolee to the parole board. That is, rather than the parolee having to justify why he should be released, the board is to have the burden of justifying why he should not be. H.R. 13118 adopts this concept, and I think it is an essential one.

The rhetoric of judicial decisions concerning parole is that it is a matter of grace, granted by the executive in its discretion. That rhetoric is beginning to be altered by reality, I believe. Increasingly, students of parole are coming to see that parole is in fact an integral component of corrections—in fact, an essential component often used to relieve institutional overcrowding. Its implications for the man or woman are enormous, affecting years of his or her life. And in light of the fact that parole is really a form of deferred sentence, surely the rhetoric of "grace" no longer serves a useful purpose.

Unless the Board can justify retention of a prisoner in incarceration, he should be released. Now certainly, I do not want to hamstring the Board; it must have discretion. But it must employ that discretion in the context of accountability, and it must do this by justifying its negative action, rather than by the often ill-equipped prisoner proving that it should take the positive step of grant of parole.

DUE PROCESS AT THE PAROLE DETERMINATION HEARING

H.R. 13118 infuses due process into the parole determination hearing by means of providing representation by counsel, disclosure of files, and a full statement of the reasons for the Board's determination. I do think that, at the present time, a full blown adversarial hearing would not be appropriate for the parole determination hearing. But, at a minimum, the prisoner must be allowed to be represented by an individual who, in a given case, may be more articulate or experienced than him; the prisoner must know what is in the files concerning him, so that he can point out errors or dispute subjective statements therein; and he must be apprised of why the Board has made the decision it has, so that he can remedy those defects which accounted for his denial of parole.

DUE PROCESS AT PAROLE REVOCATION HEARINGS

On June 29, the Supreme Court issued its opinion in *Morrissey* v. *Brewer*, which concerned state parole revocation cases. I think that decision laid to rest any argument that due process is inappropriate in revocation situations.

RIGHT OF APPEAL

Ultimately, no system of due process is going to produce improvement unless that system entails accountability. An agency can follow all the rules, yet if there is no one to look over its shoulder to check its actions, it can perpetuate old wrongs with the guise of new procedures.

Thus, H.R. 13118 provides for appeals of parole denials and parole revocations to the central Board, and to the courts. Without review, I think there is little point in providing better procedures at the lower level.

THE STATES

Some 10 percent of the men and women who are in prison are incarcerated in Federal institutions. The other 90 percent—about 180,000 individuals—are confined in state facilities. Thus, while improvement of the Federal parole system is most important, this action will do very little to remediate state conditions, save by setting a model for the States to follow, if they so choose. Yet, all the evils of which the Federal system is accused equally exist within the state systems. In Texas, for example, the prisoner is not even allowed a parole determination hearing. In other states, hearings are perfunctory exercises. In few states is representation by counsel allowed.

Consequently, H.R. 13118 imposes a condition precedent to the receipt by the States of LEAA Corrections grants—that is, the establishment of due process parole systems. I think this is essential if we are to make prison reform a national endeavor.

Once again, I appreciate the opportunity you have provided me to appear here today. I look forward to a long and fruitful joining of our mutual efforts in bringing about what I know is our jointly-shared desire for real and meaningful reform of our presently abysmal corrections process. Thank you.

STATEMENT OF MAURICE SIGLER, CHAIRMAN, U.S. BOARD OF PAROLE; ACCOMPANIED BY HUGH M. DURHAM, OFFICE OF DEPUTY ATTORNEY GENERAL AND JOSEPH BARRY, COUNSEL FOR THE BOARD

Mr. SIGLER. Mr. Chairman, I want first to express my personal appreciation and that of the U.S. Board of Parole, for the opportunity to come over here and talk to you about the proposed legislation.

Accompanying me this morning is Mr. Hugh M. Durham on my right, from the Office of the Deputy Attorney General, and on my left is Mr. Joe Barry, Counsel for the Board.

I plan to address myself primarily to the unnumbered bill prepared by Senator Burdick's staff since this bill encompasses all of the subject areas of the other bills under considerations—S. 2383, S. 2462, S. 2955, and S. 3764.

S. 3185, Senator Percy's bill, covers much of the same ground as Senator Burdick's bill and by addressing myself to the latter I hope to answer the questions that might arise under S. 3185. I will be glad to attempt to answer individual questions pertaining to all bills after discussing Senator Burdick's proposed legislation.

The Board of Parole finds much merit in this proposed bill. Its plan for a regionalized Board of Parole with some built-in appellate procedures is similar to a basic plan which has already been approved by the Board. Indeed, our plan has gone beyond the discussion and voting stage and we are preparing a pilot project. I must say, at once, however, that time has not yet permitted us to finalize the plan; thus, I speak today only for the current views of the Board of Parole with respect to regionalization.

In addition to the Board's agreement on the basic plan for a regionalized Board, some of the fundamental changes in Board procedures

which your bill provides are changes which the Board has already endorsed; for example, we have had in operation since March 1972 an experimental program for furnishing written statements of justification to persons whose parole has been denied. I shall discuss this program and others in detail as we go along.

I would now like to discuss those sections of the bill which most affect existing law.

Section 4201 of the bill would establish in the Department of Justice a National Parole Commission, presumably located in the Nation's Capital, as an agency charged with setting and supervising national policy for the parole of Federal prisoners.

A basic function of the National Parole Commission would be to create at least five regional parole authorities.

The regional authorities would be composed of a regional parole commissioner and two parole examiners, and would be empowered to exercise those powers now reserved to the Board of Parole, such as granting or denying parole applications, modifying or revoking parole orders, establishing the time to be served by any person whose parole has been revoked, and terminating parole.

The National Commissioners would be authorized by majority vote to transfer to themselves the authority to grant, modify or revoke an order paroling persons in cases where the national well-being so required. They would also have authority by majority vote to review and decide on any decision of a regional parole commissioner, on motion of any one of the National Commissioners.

The bill further provides that the National Commissioners would promulgate regulations, pursuant to the Administrative Procedures Act, which they determine to be necessary to carry out the provisions of the bill. Such a proposal is now under study in the Department of Justice.

As I previously stated, the Board of Parole favors the concept of regionalized Parole Boards. The Board feels that the regional boards would be sensitive to community problems and standards while the national board would provide uniformity of philosophy and practice, together with advances of parole techniques through central supervision.

We believe, however, that it would be wise for us to pursue first our idea of a pilot program in one region and appraise the results of this program, to enable us, with this experience, to set up a complete statutory plan without need for major revision afterwards.

Section 4201 also parallels the Board of Parole's thinking on the subject of appellate review. The Board favors limited appellate review, but extreme care must be exercised lest the concept of finality is lost in a sea of endless litigation.

Senator BURDICK. Pardon me. When you refer to an appellate review, do you refer to the appeals from the regional board to the national board?

Mr. SIGLER. Yes, sir; that is right.

Senator BURDICK. Thank you.

Mr. SIGLER. A method of discretionary appeals would eliminate a considerable number of frivolous appeals which might otherwise be taken. It may be necessary, however, to work out detailed criteria for bringing appeals in order to insure this end.

In section 4201(d)(4), the proposed bill deals with the question of "street time" of persons whose parole has been revoked. In effect, this section conforms to the existing law and practice which leaves to the Board's discretion the grant of credit for street time. Under the present statute, all of the street time is revoked, but the Board has authority to reparole at any time.

The question of street time is also addressed in two of the other bills under consideration today—S. 2955 and S. 3674. The former would give credit for one-half of the street time served under supervision by mandatory releases and parolees after they were brought back into custody for violations of the conditions of their release. The Board of Parole would also have the discretion to grant full credit in appropriate cases. The latter bill would reduce the remaining time to be served by the full amount of an individual's street time.

We believe that for the time being, the present statutory scheme is adequate to deal with the equities of each individual case. We would prefer, therefore, that the committee postpone consideration of this question until the Department of Justice has completed its in-depth review of the final draft of the National Commission on the Reform of the Federal Criminal Laws. As you know, the final draft would give full credit for street time, but the Department is not yet in a position to comment on the wisdom of this, or related approaches.

Section 4202((a) sets the minimum parole eligibility date at one-third of the sentence except for persons serving life sentences, as to whom the 15-year eligibility is maintained. We agree that the general parole eligibility should remain at one-third of the term imposed by the court as in the present statute.

The criteria for parole selection set out in section 4202(b) are similar to those in the current statute (section 4203) and have the approval of the Board of Parole. The Board is also entirely in agreement with subsection (c) of section 4202, which provides that parole conditions should have a reasonable relationship with the prisoner's conduct and present situation; that the conditions should call for only such deprivation of liberty as is necessary for reasonable protection of the public welfare and that the conditions should be reasonably specific to serve as guides for supervision and conduct.

Section 4203 provides for parole appearance procedures. First of all, let me state my approval of the use of the word "appearance" rather than the term "hearing." The present statute does not call for a personal appearance before a member or examiner on application for parole, but this has been provided in the Board's rules. The word "appearance" is exactly descriptive of the procedure and accurately suggests that this is not an adversary proceeding.

Parenthetically, I might say that even the parole revocation procedures under our statutes presently in force call for only an "opportunity to appear." The courts are unanimous that even the revocation procedures by the Parole Board are not adversary proceedings.

This bill in section 4203 provides for written notice of the time and place of appearance. This we now provide under our current practice.

Second, the bill provides that a person eligible for a parole appearance should be allowed to select an advocate to accompany and assist him. Such advocate may be "an attorney, members of the institutional staff, or any other person who qualifies under the rules promulgated by the Parole Commission."

The Board of Parole has no objection to provision for assistance to the inmate except for attorneys. We see one potential problem in that if we permit applicants for parole to retain attorneys, we can eventually expect a claim that indigent applicants are receiving less than due process of law unless counsel be appointed for them.

In the matter of revocation of parole, however, where the courts have held that a person holding such conditional liberty has more at stake than a parole applicant, the majority of the courts have held that there is no constitutional right to appointed counsel. As you know, the Criminal Justice Act provides that in revocation of parole counsel may be appointed, in the discretion of the district court, if the court finds on application by the releasee that the interests of justice requires appointment of counsel.

Section 4203 provides also that the parole applicant and his advocate shall have access to the contents of the institutional file, with some exceptions. The Board would be in favor of some method of limited access to certain file material, but the selection of such materials and mechanics of providing such limited access would be difficult to work out. For example, the bill provides for exclusion of "any part of any presentence report upon request of the sentencing judge." It would seem at first glance this thought should be reversed, viz, that the request for disclosure of the presentence report should be addressed to the judge.

As you know, the courts' presentence reports involve a delicate area, and the Rules of Criminal Procedure provide that even in a criminal trial the matter of permitting the defense to see the presentence report remains within the discretion of the trial judge.

Of these two questions of the parole applicant having an advocate and access to file materials, I should advise you that under present procedures these due process features are already granted the applicant, to a large extent, through his relationship with his caseworker who accompanies him to the parole hearing.

The caseworker will have advised the applicant concerning his chances for parole and will refer to such materials in the file as he is at liberty to discuss with him, excluding for example, such diagnostic or other matters as might be harmful to the applicant. He will also, under current practice and theory, assist the applicant in presenting his case for parole.

Nonetheless, as stated above, the Board does not object to having another advocate to represent the parole applicant. We would strongly urge, however, that the role of an advocate be limited to presenting a final statement on behalf of the applicant at the conclusion of his appearance before the Board.

The Board is now defending a class action suit in the District of Columbia claiming right to counsel and file access in parole hearings. The suit contends these are constitutionally required. We contend they are not so required, but can be provided for by statute or regulation.

Section 4203 also provides that applicants denied parole shall be furnished the reasons for such denial. As stated above, the Board of Parole, pursuant to a study commenced approximately 18 months ago to decide the feasibility and desirability of giving reasons, has currently in progress an experiment in giving written statements of justification.

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As you know, the Federal courts have uniformly held that there is no legal obligation for a parole board to give or justify its reasons for denial for parole. I should note in this connection, however, that the Supreme Court of New Jersey held that the New Jersey Parole Board should give reasons for denial.

In our experimental program in furnishing written forms with a checklist of reasons for denial, we found our original checklist less than satisfactory, but were urged by the Bureau of Prisons to continue the experiment, which it found helpful. The second version of the checklist form has used more specific reasons and we believe it will be more effective for staff and inmates.

However, the Board of Parole is convinced that a checklist cannot possibly work as well as a statement of reasons given personally to the inmate in a conference following quickly upon the parole decision. Such a conference would allow for some discussion with and direction of the inmate.

This, of course, is one of the several good reasons for establishing a regionalized Board. The Board, therefore, has no objection to this requirement. I have some doubt at this point whether we should also require that the Board on demand give a summary of the conference. Under present procedures the entire interview is taped, ready to be transcribed should the need for such arise, and the recommendation and the summary are dictated by the hearing officer and typed up. It would seem to me that these procedures, combined with the bill's other requirements, would be sufficient in this area.

We are in agreement with the bill's provisions of section 4203(g) for notifying the inmate of the result of his appearance within 30 days. Of course, we would like to be able to talk with the inmate immediately after his parole appearance. If any time limit is to be established in the bill, however, it might be well to permit flexibility in extraordinary cases as is frequently done in statutory time limits of this character.

Section 4207 sets up the procedures for revocation. It provides for a preliminary hearing to be held before a U.S. magistrate. We approve of this procedure, which is different from our current practice of having a preliminary hearing conducted by a U.S. probation officer. The hearing contemplated in the statute is more in the nature of a probable-cause hearing as discussed in the Supreme Court decision in *Morrissey* v. *Brewer*, decided June 29, 1972.

For flexibility, I would suggest that the bill provide that such preliminary hearing could be conducted by a probation officer, other than the officer who had supervised the person on conditional release. This would be in accord with the Supreme Court decision in Morrissey.

The bill's revocation procedures provide that the release/releasee "should be advised of his right to counsel and that counsel shall be appointed for him if he is unable to obtain private counsel." As we discussed above, the current law does not give a statutory or constitutional right to counsel. The Criminal Justice Act provides that appointments of counsel in parole revocation hearings are discretionary with the Court, if on request by the parolee it finds that the interests of justice require counsel.

We prefer that the law in this field remain in its present status. Our experience under the Criminal Justice Act shows us that the courts are not at all loathe to appoint counsel for applicants under this statute. Indeed, there have been many instances where the courts, possibly

through inadvertence, have appointed counsel for releasees who had been retaken on the Board's warrant on charges stemming from convictions of new criminal offenses.

The Board concurs in the provision of section 4207 permitting the parolee to call voluntary witnesses. This is now allowed under our present rules. We also agree that he should be allowed to cross-examine adverse witnesses, but strongly urge that such right should not be granted in cases of persons who have been convicted of new offenses or who admit their violation of parole.

In our view, this approach accords fully with the Supreme Court decision in *Morrissey* v. *Brewer*. This approach would also dovetail with the criteria for deciding whether an alleged violator should receive a local revocation hearing or have his hearing at the institution from which he was paroled.

These criteria—whether or not he has been convicted of criminal offenses while on parole and whether or not he admits violations of his conditions of release—were first enunciated, as you know, in *Hyser* v. *Reed*, an en banc opinion of the Circuit Court of Appeals for the District of Columbia Circuit, written by now Chief Justice Burger, who also wrote the Morrissey Supreme Court opinion.

To sum up the picture on this point, the current Court opinions would require that an alleged parole violator be kept in the locality of supervision for his revocation hearing if the alleged violation did not constitute a new criminal conviction, or in cases of a noncriminal volation of parole, if he denies the alleged violation.

In both cases, he would also have the right to examine the adverse evidence against him and to cross-examine the witnesses, if he wished. However, if he elects not to contest the violations or if the alleged violations have been the subject of new criminal convictions no need exists for a local hearing, nor for the cross-examination of adverse witnesses.

Concerning the provisions for bail in the proposed bill, section 4207(c), we would suggest that at least limiting language be added to the bill's provisions. Warrants for retaking parole violators are not lightly issued. The Court of Appeals for the District of Columbia Circuit in *Baker* v. *Sard* has ruled that bail should be granted only sparingly in cases of parole violators. Our experience in the few cases wherein bail was granted for a parole violator has shown that they disappear and are not found.

I would like now to address myself to the provision of the proposed bill which would revise 18 U.S.C. section 5002, dealing with an Advisory Correction Counsel. We believe that such a revision is not desirable at this time.

There presently exists an Inter-Agency Council on Corrections which is comprised of representatives of various Federal agencies which share responsibilities in the field of corrections. The Council developed out of a memorandum from the President of the United States to the Attorney General on November 13, 1969. The President noted that the American system for correcting and rehabilitating offenders urgently needed strengthening on all fronts.

He called attention to overlapping efforts in some areas and inadequate attention to others. The President asked the Attorney General to assume leadership in bringing the necessary resources together for corrective measures.

The Attorney General assigned to the Director of the Bureau of Prisons and the Associate Administrator of the Law Enforcement Assistance Administration the responsibility to coordinate Federal efforts in the field of corrections and allied activities.

The Council, which has been in existence only since 1970, is comprised of members of the following agencies: Department of Justice, U.S. Department of Labor, U.S. Civil Service Commission, Housing and Urban Development Administration, Department of Defense, Department of Health, Education, and Welfare, Office of Economic Opportunity.

During the course of its short life, the Inter-Agency Council on Corrections has concerned itself with important and far-reaching issues. Following are but a few representative agenda items discussed, reviewed and acted upon by the Council:

1. A national strategy for the prevention of juvenile delinquency.
2. Revision of Executive Order 325–A and other restrictions on the constructive Federal uses of convict labor.
3. The Federal performance measurement system—PMS—and how it relates to the field of corrections.
4. More vigorous participation of Federal agencies in the employment of ex-offenders and the development of an employment "model" for the Washington metropolitan area.
5. The projected activities of the new American Bar Association Commission on Correctional Facilities and Services.
6. New developments in correctional architecture.

I would also like to point out that the Council meets roughly once a month under the cochairmanship of Norman A. Carlson, Director of the Bureau of Prisons, and Richard Velde, Associate Administrator of LEAA.

Because of the relative newness of the Council, and the fact that it has brought together the resources of all important Federal agencies in the corrections field, we would request that the committee postpone any action on this provision of the bill. We are of the opinion that the Inter-Agency Council on Corrections will fully meet the objectives contemplated by the revised version of section 5002, and would be happy to keep the committee apprised of its accomplishments.

Thank you.

Senator BURDICK. Thank you very much for a very complete, a very comprehensive statement. We have a live quorum in progress and I have consulted with other members, and they tell me that I should go over and answer the quorum. It will be a matter of 10 or 15 minutes and we will have a recess for a short period of time.

(Whereupon, at 11:05 a.m., the subcommittee recessed, and reconvened at 11:18 a.m.)

Senator BURDICK. Mr. Sigler, I want to thank you again for your testimony. I noticed in your remarks that we are pretty much in agreement——

Mr. SIGLER. I would say that is true.

Senator BURDICK (continuing). Of what needs to be done.

Mr. SIGLER. Yes, sir.

Senator BURDICK. You have initiated some procedures that correspond to many of the provisions that are in our bill.

Mr. SIGLER. That is correct.

Senator BURDICK. And preserve the concept that there is not a judicial right to judicial review, but you keep it in-house.

Mr. SIGLER. We believe that is proper.

Senator BURDICK. That is the basis for your requiring one of the attorneys there, rather than a matter of right?

Mr. SIGLER. Yes.

Senator BURDICK. And you feel there is no constitutional right for this?

Mr. SIGLER. Yes, sir; that is our legal advice and I would, of course, agree with that.

Senator BURDICK. Why do you object to giving the inmates a copy of the parole appearance summary if it does not require additional work on the parole agency to do this?

Mr. SIGLER. To begin with, sir, we feel that—as I stated—that the information he has received is adequate. It will create extra work because—you are talking about those that we deny, of course—or is there a difference on the denials?

Senator BURDICK. I am sure the one who succeeds isn't interested.

Mr. SIGLER. That is right. There are some things that could be in this document that would hinder him. We disagree with giving this man a document—for the same reason that we disagree with giving full access to the present report—there could be something in this summary, as indicated by various members of our Parole Board and examining staff, that could be detrimental to the man.

Otherwise, there is no basic reason.

Senator BURDICK. But you agree that the reasons for denial should be more specific than generally has been used in the past?

Mr. SIGLER. I think—yes, sir. To answer that specifically, "Yes." And I will say the Board of Parole agrees—excuse me—that the man, under our new concept and under this new legislation and plans for parole as proposed, should be given reasons orally. Then he should be given this in writing. And he should be given the specific reason.

Senator BURDICK. I visited a great many Federal institutions, as you probably know, and I do come across this complaint that they don't hear from the Parole Board.

Mr. SIGLER. Right.

Senator BURDICK. Has this been happening, that they have waited for weeks and months for a decision?

Mr. SIGLER. I think that is an accurate statement. We try to make these timely, at least as best we can, but I would say the average would be somewhere between 35 and 45 days. That is about what it takes. Sometimes we do this quicker, but sometimes it takes longer also.

Senator BURDICK. And, in your opinion, would that period substantially be shortened if we had the five regional offices?

Mr. SIGLER. If we had these regional offices, I think we could give an immediate decision. That is my concept. We would tell a man, "You made it," or we would tell a man that you did not make it. The bill calls for something less than that but we think in realistic cases where a man appears before the panel, he has the right to a vote on his parole or denial of parole at that particular time.

During the—well, for example, we will say that in Danbury, it takes about a week to hold these hearings. Sometimes it is less than a week and before the paroling authorities have left, everybody should be told that they have made it or that they haven't made it.

Senator BURDICK. And in terms of the mechanics, would the Regional Parole Board travel to the institutions—is that how you would handle it?

Mr. SIGLER. How it should be done—would you be a little more specific?

Senator BURDICK. Would the parole be mobile, move from institution to institution to hold these hearings?

Mr. SIGLER. Yes; in panels. We see——

Senator BURDICK. About the Regional Boards now——

Mr. SIGLER. The Regional Boards would probably be stationed in some region. For example, I think one regional headquarters would be in this city. But the men, of course, the Parole Board members and the examiners would travel to the institutions in this region. It would be a plus, I think, because of the fact that many people would handle the same institutions all the time. It would be adding to the good paroling procedures.

Senator BURDICK. Under the present parole procedures, as I understand them, and, in fact, he may retain his own attorney. Are you now saying that you oppose this?

Mr. SIGLER. That would apply only to revocations, sir.

Senator BURDICK. On revocations?

Mr. SIGLER. On revocations. At this point, we do not have attorneys in the Parole Board hearings.

Senator BURDICK. Would you make that discretionary, whether he should have an attorney at hearings?

Mr. SIGLER. No. We don't think that should be discretionary. I think the attorney should not come to a Parole Board hearing for these reasons: No. 1. I don't think that we could afford it. Because of due-process requirements, the indigents could claim they were not being given fair treatment, because they could not afford an attorney and perhaps the other man could. They could very easily say to me, it seems to me, that they were not getting due process, a fair shake.

And we are afraid that under this type of procedure it would be just too much expense.

No. 2, the ability to find these people, these attorneys, and make the arrangements. I think it would be too cumbersome. And Mr. Barry pointed out something that I forgot to say. We don't believe that, since this is not an adversary hearing, an attorney coming before the Parole Board is needed. We recognize the fact that many of these people who are inarticulate and express the need, might need somebody to help them, but it could be a member of the staff, it could be another inmate in the institution.

Senator BURDICK. Could it be a friend?

Mr. SIGLER. It could be a friend.

Senator BURDICK. But not necessarily or specifically, not a lawyer?

Mr. SIGLER. Specifically, not a lawyer.

Senator BURDICK. If access to most material in the file is now Board practice, why do you oppose putting this in the statute, the appropriate safeguards?

Mr. SIGLER. I don't think—I don't know how you would make it appropriate—and we haven't been able to come up with how you would make it appropriate or put appropriate safeguards in this.

For example, at the present time with respect to the presentence investigation, to use that report as an illustration, some of the courts

would not want that given to the inmates. And people who are giving the information, giving the information to the probation officers who are developing the case history, if they knew this was going to be public information, probably much of it, the information that you now do receive would not be given.

Senator BURDICK. I see. Since the Supreme Court, *Morrissey* v. *Brewer*, recognizes that revocation of parole inflicts a grievous loss on the parolee and, consequently, an orderly process is required, what possible objection do you have to the presence of an attorney to insure that these requirements are met?

Mr. SIGLER. In the revocation?

Senator BURDICK. Yes.

Mr. SIGLER. In the revocation, the man does have an attorney if he wants to, and if he does not have the money the local courts may appoint one. If the local Federal court decides that he should have an attorney, based on the evidence, it may appoint him one.

Senator BURDICK. In other words, he has his own attorney, but an attorney may be appointed in the courts for those who do not have the money for an attorney. But you do not have any objection to an attorney, as such?

Mr. SIGLER. No.

Senator BURDICK. What problems do you have with section 4203, subsection 3, a method hampering inmates' access to the materials in the files?

Mr. SIGLER. May I refer to this?

Senator BURDICK. Yes.

Mr. SIGLER. For the simple reason that there are things in these files, Senator Burdick, that could be dangerous to the person who gave the information to us. And a real basic illustration is one where a man's wife had given us information—given information to the authorities—and it is in the file. We don't believe that would be good.

And under certain circumstances, this could help break up a family, and it could just be real dangerous to a person where this could cause violence after the man gets out of the institution. These are the reasons, some of the reasons, that we believe this should not be done.

Senator BURDICK. Then you believe some of the information would dry up?

Mr. SIGLER. Beg pardon?

Senator BURDICK. Then you believe some of the information would not be available to you, as it is now?

Mr. SIGLER. I am certain of that, and I think the courts would agree, and the people who develop the probation officer reports, develop the presentence investigations, I would think they would say so.

Senator BURDICK. Do you feel it is practical for the innovative guidelines to spell out every fact that may be considered in the decision to parole?

Mr. SIGLER. No, sir; I do not.

Senator BURDICK. Do you think there should be some area of discretion?

Mr. SIGLER. I think there must be.

Senator BURDICK. After the initial denial of parole, how frequently should inmates be given a subsequent appearance?

Mr. SIGLER. Well, that, of course, I think would depend on the help available. I can tell you that in some States they see them every year. I

can't see how that would be possible in an organization such as ours. I doubt that is needed.

I don't believe anybody would agree with that in our organization. I don't think that we should ever close the door on a person either. To use an illustration: a man comes in who is maybe a three- or four-time loser, and he is convicted of aggravated assault and bank robbery, and he gets 20 years. Our policy is to see the man right after he comes in, or as early afterward as possible. Then we give him a setoff period.

That type of man, I can see where we should see him at least for every 2 years, maybe even 3. On the other hand, a man who receives a 5-year sentence for stealing an automobile, and he is a young person, we see him. I think he should be given a shorter setoff because the possibility of this man making parole, of making it on parole, is much better.

So, again, this is where the discretion is.

Senator BURDICK. Should a complete transcript be taken of every parole hearing and a copy of this given to the inmate?

Mr. SIGLER. I don't think a copy should be given to the inmate but I think a transcript on tape should be kept in the file; yes, sir.

Senator BURDICK. And in what instances would that be available to the parolee or his attorney?

Mr. SIGLER. This information, I think, in the event that there was a hearing approved by the Court and the attorney needed this information, I think it should be available to him under certain conditions. Again, on a limited basis.

Senator BURDICK. And, again, on the discretion of the Court?

Mr. SIGLER. Right.

Senator BURDICK. What do you think of the suggestion that people who are sentenced to life, or they are sentenced to a sentence which is longer than 30 years, should they be eligible for parole after serving only 10 years?

Mr. SIGLER. To answer your question in two different ways: 30 years, I think that that would be reasonable, maybe even sooner in some cases. In what used to be capital cases, I think I would not change the law. I think that lifers should be given hope. I don't think hope should be taken from any man because I don't believe many people could serve many years in prison without hope. I think there must be an accountability factor and I think the present law is a good one, which calls for 15 years in life sentences.

Senator BURDICK. What is your opinion of the procedure to suspend supervision as described in subsection (d)(5) of section 4201 of the Parole Commission Act?

Mr. SIGLER. I think there comes a time in many cases when supervision is no longer necessary, and when it becomes no longer necessary it creates an unnecessary burden, or work burden. It puts a condition on the parolee that is not necessary or called for.

Senator BURDICK. Wouldn't it be better to give inmates a statement of reason for denial rather than the statement of justification, as on page 2 of your testimony?

Mr. SIGLER. The reason for justification, page 2—it is just another term, Senator Burdick. That means giving reasons.

Senator BURDICK. And you agree with that?

Mr. SIGLER. I agree that there should be——

Senator BURDICK. That there should be a reason for a denial?

Mr. SIGLER. There should be a reason for denial; yes, sir.

Senator BURDICK. Mr. Mathias?

Senator MATHIAS. I was interested in your statement—the point of view that only a very few parolees have been granted bail, and in those cases have not been successful, a successful experiment.

Have you got any idea as to the number of cases in which bail has been granted parolees and the record of success or failure?

Mr. SIGLER. I can't give you that. Our experiences have not been good. It has been so negative here that I felt free in giving this type of testimony. They do abscond and they are hard to find, especially where they have been charged with—you know, with another felony. But we could research it if you think that would be desirable.

Senator MATHIAS. It might be useful if we could have the record for the past several years of cases in which there have been parolees granted bail, and the record of success or failure.

Mr. SIGLER. I don't know how effective of an answer we will be able to give you, but we will give you an answer.

Senator MATHIAS. Fine, because I think it is important information for the positive recommendation of the bill.

Mr. SIGLER. Right.

Senator MATHIAS. And in light of your strong feelings against it, it would be useful to have some concrete information on it.

Mr. SIGLER. Yes, sir.

Senator MATHIAS. Thank you.

Mr. MEEKER. If the chairman concurs, could you send us a letter for the record responding as to why the expections to the wording "information from the files" as provided on the committee print bill, why they do not satisfy the questions which you raised?

Mr. SIGLER. We will do that.

Mr. MEEKER. All right. Thank you.

Senator BURDICK. I think that is all the questions we have, and unless the staff has further questions at this time, the subcommittee will just thank you very much for your appearance here this morning.

Mr. SIGLER. Thank you.

Senator BURDICK. Our next witness is F. Lee Bailey, counselor at law, Boston, Mass., an attorney who is authorized to practice in all courts.

(The prepared statement of Mr. Sigler follows:)

STATEMENT OF MAURICE H. SIGLER, CHAIRMAN, BOARD OF PAROLE

I want first to express my personal appreciation and that of the U.S. Board of Parole for the opportunity to come over here and talk to you about the proposed legislation.

I plan to address myself primarily to the un-numbered bill prepared by Senator Burdick's staff since this bill encompasses all of the subject areas of the other bills under consideration—S. 2383, S. 2462, S. 2955, and S. 3764. S. 3185, Senator Percy's bill, covers much of the same ground as Senator Burdick's bill and by addressing myself to the latter I hope to answer the questions that might arise under S. 3185. I will be glad to attempt to answer individual questions pertaining to all bills after discussing Senator Burdick's proposed legislation.

The Board of Parole finds much merit in this proposed bill. Its plan for a regionalized Board of Parole with some built-in appellate procedures is similar to a basic plan which has already been approved by the Board. Indeed, our plan has gone beyond the discussion and voting stage and we are preparing a pilot project. I must say, at once, however, that time has not yet permitted us to finalize the plan; thus, I speak today only for the current views of the Board of Parole with respect to regionalization.

In addition to the Board's agreement on the basic plan for a regionalized Board, some of the fundamental changes in Board procedures which your bill provides are changes which the Board has already endorsed; for example, we have had in operation since March 1972 an experimental program for furnishing written statements of justification to persons whose parole has been denied. I shall discuss this program and others in detail as we go along.

I would now like to discuss those sections of the bill which most affect existing law.

Section 4201 of the bill would establish in the Department of Justice a National Parole Commission, presumably located in the Nation's Capital, as an agency charged with setting and supervising national policy for the parole of federal prisoners.

A basic function of the National Parole Commission would be to create at least 5 regional paroling authorities.

The regional authorities would be composed of a Regional Parole Commissioner and two parole examiners, and would be empowered to exercise those powers now reserved to the Board of Parole, such as granting or denying parole applications, modifying or revoking parole orders, establishing the time to be served by any person whose parole has been revoked, and terminating parole.

The National Commissioners would be authorized by majority vote to transfer to themselves the authority to grant, modify or revoke an order paroling persons in cases where the national well-being so required. They would also have authority by majority vote to review and decide on any decision of a Regional Parole Commissioner, on motion of any one of the National Commissioners. The bill further provides that the National Commissioners would promulgate regulations, pursuant to the Administrative Procedure Act, which they determine to be necessary to carry out the provisions of the bill. Such a proposal is now under study in the Department of Justice.

As I previously stated, the Board of Parole favors the concept of regionalized Parole Boards. The Board feels that the structure envisioned by the bill would be meritorious because the Regional Boards would be sensitive to community problems and standards while the National Board would provide uniformity of philosophy and practice, together with advances of parole techniques through central supervision. We believe, however, that it would be wise for us to pursue first our idea of a pilot program in one Region and appraise the results of this program, to enable us. with this experience, to set up a complete statutory plan without need for major revision afterwards.

Section 4201 also parallels the Board of Parole's thinking on the subject of appellate review. The Board favors limited appellate review, but extreme care must be exercised lest the concept of finality is lost in a sea of endless litigation. A method of discretionary appeals would eliminate a considerable number of frivolous appeals which might otherwise be taken. It may be necessary. however, to work out detailed criteria for bringing appeals in order to insure this end.

In Section 4201(d)(4), the proposed bill deals with the question of "street time" of persons whose parole has been revoked. In effect, this Section conforms to the existing law and practice which leaves to the Board's discretion the grant of credit for street time. Under the present statute, all of the street time is revoked, but the Board has authority to reparole at any time.

The question of street time is also addressed in two of the other bills under consideration today—S. 2955 and S. 3674. The former would give credit for one-half of the street time served under supervision by mandatory releasees and parolees after they were brought back into custody for violations of the conditions of their release. The Board of Parole would also have the discretion to grant full credit in appropriate cases. The latter bill would reduce the remaining time to be served by the full amount of an individual's street time.

We believe that for the time being the present statutory scheme is adequate to deal with the equities of each individual case. We would prefer, therefore. that the Committee postpone consideration of this question until the Department of Justice has completed its in-depth review of the Final Draft of the National Commission on the Reform of the Federal Criminal Laws. As you know, the Final Draft would give full credit for street time. but the Department is not yet in a position to comment on the wisdom of this, or related, approaches.

Section 4202(a) sets the minimum parole eligibility date at one-third of the sentence except for persons serving life sentences, as to whom the 15-year eligibility is maintained. We agree that the general parole eligibility should remain at one-third of the term imposed by the Court as in the present statute.

The criteria for parole selection set out in Section 4202(b) are similar to those in the current statute (§ 4203) and have the approval of the Board of Parole.

The Board is also entirely in agreement with subsection (c) of Section 4202, which provides that parole conditions should have a reasonable relationship with the prisoner's conduct and present situation; that the conditions should call for only such deprivation of liberty as is necessary for reasonable protection of the public welfare and that the conditions should be reasonably specific to serve as guides for supervision and conduct.

Section 4203 provides for parole appearance procedures. First of all, let me state my approval for the use of the word "appearance" rather than the term "hearing." The present statute does not call for a personal appearance before a Member or Examiner on application for parole, but this has been provided in the Board's rules. The word "appearance" is exactly descriptive of the procedure and accurately suggests that this is not an adversary proceeding. Parenthetically I might say that even the parole revocation procedures under our statutes presently in force call for only an "opportunity to appear." The courts are unanimous that even the revocation procedures by the Parole Board are not adversary proceedings.

This Bill in section 4203 provides for written notice of the time and place of appearance. This we now provide under our current practice. Secondly, the Bill provides that a person eligible for a parole appearance should be allowed to select an advocate to accompany and assist him. Such advocate may be "an attorney, member of the institutional staff, or any other person who qualifies under the rules promulgated by the Parole Commission." The Board of Parole has not objection to provision for assistance to the inmate except for attorneys. We see one potential problem in that if we permit applicants for parole to retain attorneys, we can eventually expect a claim that indigent applicants are receiving less than due process of law unless counsel be appointed for them. In the matter of revocation of parole, however, where the courts have held that a person holding such conditional liberty has more at stake than a parole applicant, the majority of the courts have held that there is no constitutional right to appointed counsel. As you know, the Criminal Justice Act provides that in revocation of parole counsel may be appointed, in the discretion of the district court, if the court finds on application by the releasee that the interests of justice requires appointment of counsel.

Section 4203 provides also that the parole applicant and his advocate shall have access to the contents of the institutional file, with some exceptions. The Board would be in favor of some method of limited access to certain file material but the selection of such materials and mechanics of providing such limited access would be difficult to work out. For example, the Bill provides for exclusion of "any part of any pre-sentence report upon request of the sentencing judge". It would seem at first glance this thought should be reversed, viz., that the request for disclosure of the pre-sentence report should be addressed to the judge. As you know, the courts' pre-sentence reports involve a delicate area, and the Rules of Criminal Procedure provide that even in a criminal trial the matter of permitting the defense to see the pre-sentence report remains within the discretion of the trial judge.

On these two questions of the parole applicant having an advocate and access to file materials, I should advise you that under present procedures these due process features are already granted the applicant, to a large extent, through his relationship with his caseworker who accompanies him to the parole hearing. The caseworker will have advised the applicant concerning his chances for parole and will refer to such materials in the file as he is at liberty to discuss with him, excluding for example, such diagnostic or other matters as might be harmful to the applicant. He will also, under current practice and theory, assist the applicant in presenting his case for parole. Nonetheless, as stated above, the Board does not object to having another advocate to represent the parole applicant. We would strongly urge, however, that the role of an advocate be limited to presenting a final statement on behalf of the application at the conclusion of his appearance before the Board.

The Board is now defending a class action suit in the District of Columbia claiming right to counsel and file access in parole hearings. The suit contends these are constitutionally required. We contend they are not so required, but can be provided for by statute or regulation.

Section 4203 also provides that applicants denied parole shall be furnished the reasons for such denial. As stated above, the Board of Parole, pursuant to a study commenced approximately 18 months ago to decide the feasibility and desirability of giving reasons, has currently in progress an experiment in giving written statements of justification.

As you know, the federal courts have uniformly held that there is no legal obligation for a Parole Board to give or justify its reasons for denial for parole.

I should note in this connection, however, that the Supreme Court of New Jersey held that the New Jersey Parole Board should give reasons for denial. In our experimental program in furnishing written forms with a check-list of reasons for denial we found our original check list less than satisfactory, but were urged by the Bureau of Prisons to continue the experiment, which it found helpful. The second version of the check-list form has used more specific reasons and we believe it will be more effective for staff and inmates.

However, the Board of Parole is convinced that a checklist cannot possibly work as well as a statement of reasons given personally to the inmate in a conference following quickly upon the parole decision. Such a conference would allow for some discussion with and direction of the inmate. This, of course, is one of the several good reasons for establishing a regionalized Board. The Board, therefore, has no objection to this requirement. I have some doubt at this point whether we should also require that the Board on demand give a summary of the conference. Under present procedures the entire interview is taped, ready to be transcribed should the need for such arise, and the recommendation and the summary are dictated by the hearing officer and typed up. It would seem to me that these procedures, combined with the bill's other requirements, would be sufficient in this area.

We are in agreement with the bill's provisions of § 4203(g) for notifying the inmate of the result of his appearance within 30 days. Of course, we would like to be able to talk with the inmate immediately after his parole appearance. If any time limit is to be established in the bill, however, it might be well to permit flexibility in extraordinary cases as is frequently done in statutory time limits of this character.

Section 4207 sets up the procedures for revocation. It provides for a preliminary hearing to be held before a U.S. Magistrate. We approve of this procedure, which is different from our current practice of having a preliminary hearing conducted by a U.S. Probation Officer. The hearing contemplated in the statute is more in the nature of a "probable cause" hearing as discussed in the Supreme Court decision in *Morrissey* v. *Brewer*, decided June 29, 1972. For flexibility I would suggest that the bill provide that such preliminary hearing could be conducted by a Probation Officer, other than the officer who had supervised the person on conditional release. This would be in accord with the Supreme Court decision in *Morrissey*.

The bill's revocation procedures provide that the releasee "should be advised of his right to counsel and that counsel shall be appointed for him if he is unable to obtain private counsel." As we discussed above, the current law does not give a statutory or constitutional right to counsel. The Criminal Justice Act provides that appointments of counsel in parole revocation hearings are discretionary with the court, if on request by the parolee it finds that the interests of justice require counsel.

We prefer that the law in this field remain in its present status. Our experience under the Criminal Justice Act shows us that the courts are not at all loathe to appoint counsel for applicants under this statue. Indeed, there have been many instances where the courts, possibly through inadvertence, have appointed counsel for releasees who had been retaken on the Board's Warrant on charges stemming from convictions of new criminal offenses.

The Board concurs in the provision of § 4207 permitting the parolee to call voluntary witnesses. This is now allowed under our present rules. We also agree that he should be allowed to cross examine adverse witnesses, but strongly urge that such right should not be granted in cases of persons who have been convicted of new offenses or who admit their violation of parole. In our view, this approach accords fully with the Supreme Court decision in *Morrissey* v. *Brewer*. This approach would also dovetail with the criteria for deciding whether an alleged violator should receive a local revocation hearing or have his hearing at the institution from which he was paroled. These criteria—whether or not he has been convicted of criminal offenses while on parole and whether or not he admits violations of his conditions of release—were first enunciated, as you know, in *Hyser* v. *Reed*, an en banc opinion of the Circuit Court of Appeals for the District of Columbia Circuit, written by now Chief Justice Burger, who also wrote the *Morrissey* Supreme Court opinion.

To sum up the picture on this point, the current Court opinions would require that an alleged parole violator be kept in the locality of supervision for his revocation hearing if the alleged violation did not constitute a new criminal conviction, or in cases of a noncriminal violation of parole, if he denies the alleged

violation. In both cases, he would also have the right to examine the adverse evidence against him and to cross examine the witnesses, if he wished. However, if he elects not to contest the violations or if the alleged violations have been the subject of new criminal convictions no need exists for a local hearing, nor for the cross examination of adverse witnesses.

Concerning the provisions for bail in the proposed bill, (§ 4207(c)), we would suggest that at least limiting language be added to the bill's provisions. Warrants for retaking parole violators are not lightly issued. The Court of Appeals for the District of Columbia Circuit in *Baker* v. *Sard* has ruled that bail should be granted only sparingly in cases of parole violators. Our experience in the few cases wherein bail was granted for a parole violator has shown that they disappear and are not found.

I would like now to address myself to the provision of the proposed bill which would revise 18 U.S.C. § 5002 dealing with an Advisory Correction Council. We believe that such a revision is not desirable at this time.

There presently exists an Inter-Agency Council on Corrections which is comprised of representatives of various federal agencies which share responsibilities in the field of corrections. The Council developed out of a memorandum from the President of the United States to the Attorney General on November 13, 1969. The President noted that the American system for correcting and rehabilitating offenders urgently needed strengthening on all fronts.

He called attention to overlapping efforts in some areas and inadequate attention to others. The President asked the Attorney General to assume leadership in bringing the necessary resources together for corrective measures.

The Attorney General assigned to the Director of the Bureau of Prisons and the Associate Administrator of the Law Enforcement Assistance Administration the responsibility to coordinate federal efforts in the field of corrections and allied activities.

The Council, which has been in existence only since 1970, is comprised of members of the following agencies: Department of Justice, U.S. Department of Labor, U.S. Civil Service Commission, Housing and Urban Development Administration, Department of Defense, Department of Health, Education and Welfare, Office of Economic Opportunity.

During the course of its short life, the Inter-Agency Council on Corrections has concerned itself with important and far reaching issues. Following are but a few representative agenda items discussed, reviewed and acted upon by the Council:

1. A national strategy for the prevention of juvenile delinquency.
2. Revision of Executive Order 325–A and other restrictions on the constructive federal uses of convict labor.
3. The federal Performance Measurement System (PMS) and how it relates to the field of corrections.
4. More vigorous participation of federal agencies in the employment of ex-offenders and the development of an employment "model" for the Washington Metropolitan area.
5. The projected activities of the new American Bar Association Commission on Correctional Facilities and Services.
6. New developments in correctional architecture.

I would also like to point out that the Council meets roughly once a month under the co-chairmanship of Norman A. Carlson, Director of the Bureau of Prisons, and Richard Velde, Associate Administrator of LEAA.

Because of the relative newness of the Council, and the fact that it has brought together the resources of all important Federal agencies in the corrections field, we would request that the Committee postpone any action on this provision of the bill. We are of the opinion that the Inter-Agency Council on Corrections will fully meet the objectives contemplated by the revised version of section 5002, and would be happy to keep the Committee apprised of its accomplishments.

STATEMENT OF F. LEE BAILEY, COUNSELOR AT LAW, BOSTON, MASS.

Mr. Bailey. Good morning, Mr. Chairman.

Senator Burdick. We have 22 minutes. Would you like to start now or would you like to come back at 2 o'clock?

Mr. Bailey. If I may preface my remarks by saying I have probably less than that, because at 2 o'clock this afternoon whether I go

via helicopter or by plane, I must be in St. Louis. I must make the first report on the penal reform of the American trial lawyers.

Senator BURDICK. I wanted to assure you we didn't want to cut you off.

Mr. BAILEY. I will be very brief. I should say by way of background that the copy of this bill was sent to me by Senator Percy, and I responded to it after analyzing it, considering it, and I determined that I was very much in favor of it. I told Senator Percy that I would be glad to appear in support of this.

I have discussed it with others in my profession, my colleagues, with the people on the committee for the reform, which is concerning itself with parole, and probation as well. I think that, as a large-scale substitute for the existing system, it is substantially sound.

I believe that the bill is pretty well drafted. I am particularly in favor of several facets of the proposed operation of the parole system, and I will list them very briefly.

I indicated why I think it will improve our present conditions, and then I will submit to any questions that you may have.

First, I think that the apex of the proposed system, that is the advisory council, can render a great service because I conceive of that as being a group of distinguished men to whom, not only the executive and legislative and judicial branches but probably the public, would listen, because very much has been wrong.

There has been a lack of communication as to exactly what was going on in the system. I think the regionalization will certainly find general acceptance and enthusiasm, in fact, among the lawyers who are familiar with the bill, and promises to make much more efficient the operation of the parole and probation system.

The merging of the two functions has for a long time made a great deal of sense to many people, of whom I am one of those people. The injection, and I see it in the bill, of a due process of a government offense, an ascertainable standard that is of immeasurable value. Right now, we lawyers are only asked for advice by relatives, as a rule, since we don't appear at parole hearings.

We are asked how a man can make sure that he is receiving equal treatment, at least in relation to someone else who last week got released, and we give very hazy answers and this is because we, frankly, don't know. The patchwork of the parole areas varies sharply, and it varies from one locale to the other. The standards are difficult for us to define, and I think this bill takes a good step in that direction.

I feel—and it just happens—that the testimony of the last witness bears this out, that in many cases it would be helpful to have counsel. In some cases counsel could advise them if they had been given a fair hearing, and perhaps stop the complaint right now. And in some cases, I am sure, lawsuits would be brought to enforce the minimum standards.

I do believe if counsel had been present at some of these hearings, the problems might have been threshed out in the court already. But their presence should not be barred for economic reasons. We have demonstrated that we can provide advice to the indigent who does not have money to pay counsel, and in the long run it just makes good sense.

I think it would be helpful simply to give a man who has been turned down the feeling that he has had his day in court. This

enables him to enjoy that frame of mind where he may be able to withstand the remaining days actively rehabilitating himself instead of feeding himself with resentment. That is a psychological advance that would be of benefit just through the use of an attorney.

Another facet of the proposed operation of the parole system, and it is a dual facet, perhaps the one that I am prepared to comment on—this is most strongly. It involves the ability of the parole people, if I may call them that, who have concern with the offenders to divert convictions, and the subsequent traumatic process of indictments, judgments, convictions, and the subsequent legal staff that, therefore, would have to be ascertained.

We have used, on an informal basis, a similar procedure for minor offenses in my State and this is continuing. And this is probation without judgment. It has done a tremendous amount of good for the first offenders and I think it would serve the public to keep the people out of prison who don't need to be there.

The other side of the group's concern, indeed, their power, that is appealing—is there a power to make a recommendation after an independent study of sentence, goes to a judge to enforce it, at least to the extent that he must respond in writing, if he is going to reject it.

Now, we—especially those who travel in the States—see sentencings raising from 1 day to life for a great variety of offenses, and there is more potluck involved than there is any standardization. It is impossible for me to say that any two cases were completely balanced or comparably balanced. The judges ordinarily think uniformly, and we don't know what information he has, and we don't know whether it is inaccurate.

We had no way to respond to it. It might be tough on sex offenses, and so forth, and he might slap one on a man who needed medical attention, or he might be tough on embezzlement. You have to read the judge according to his own personality. The system that is suggested, it seems to me—and I am going to be prepared for even flaws in it—there is nothing that is perfect—to promise that over that period of time we will be able to more dependently forecast what a fair sentence was, taking into account all the ingredients, ask the question of whether it was necessary? That should never be passed on lightly. And bring enough information to the judge to do more successful things with our functions and procedures.

These features, set out as I have said, and the bill generally is one that—I have no difficulty in supporting it. I think that the practitioners will echo some of the views, but the diversionary punishment or the probation—the standardization through formal recommendations after careful and conscientious study, through a sentencing court, I think most judges would welcome it.

I think in those States where a jury does the sentencing that this ought to be taken into consideration, although this is not only the Federal problem, to give grave consideration to such recommendations, and that in the main this Senate bill as it now stands, has great hope for being a useful tool to clean up what we have recognized, a system that is lacking, or whatever, and these hearings will begin to help today.

That is the summary of my feelings and offerings about the bill, and if there are any specific points so far that either myself or any

other witness would have happened to make, I will try to respond to them.

Senator BURDICK. Thank you very much. I can't quarrel very much with support.

Very good. You have touched on pretrial diversion. Last week we had 2 days of hearings on it. We had U.S. Attorney Whitney North Seymour, Jr., of the Southern District of New York, who gave very powerful testimony and the testimony shows that psychologically, at least, there is a greater chance to rehabilitate before sentence than afterward.

Mr. BAILEY. Yes.

Senator BURDICK. And we are exploring this area vigorously.

Mr. BAILEY. I understood Attorney General Mitchell to say at the President's Conference on Penal Reform in Williamsburg last December that the Justice Department would be taking on a new policy of approval, that they would be approving this kind of sentence in certain cases.

I must say it has been slow to service, but I know Mr. Seymour and I am pleased to understand that a prosecutor is sharing the same view. I think we all know that it is easier to bring a man back if you don't kick him too hard the first time around.

Senator BURDICK. Thank you very much. It is always a pleasure to have you before this committee.

Our next witness is Julian Tepper, director, National Legal Aid Association, Washington, D.C.

Would you care to appear until 12 o'clock?

STATEMENT OF JULIAN TEPPER, DIRECTOR (NLADA), NATIONAL LAW OFFICE, WASHINGTON, D.C.

Mr. TEPPER. Beg your pardon?

Senator BURDICK. We are recessing at 12 o'clock. Would this interrupt your testimony?

Mr. TEPPER. I could give you an opening statement in that time and if you wish, I will return for the questioning.

Senator BURDICK. Mr. Tepper is the Director of the National Legal Aid Association, Washington, D.C.

It is a pleasure to have you here, Mr. Tepper.

Mr. TEPPER. Thank you.

Just for the record, Senator Burdick, I am Director of the National Legal Aid and Defender Association, National Law Office; the Executive Director of NLADA is Frank Jones. The National Legal Aid and Defender Association, as you are no doubt aware, is the only national association of poverty lawyers, from legal services, legal aid, and public defender programs.

It is an honor to represent the National Legal Aid Defender Association before you today.

Mr. Chairman: "To an even greater extent than in the case of imprisonment, probation and parole practice is determined by an administrative discretion that is largely uncontrolled by legal standards, protections, or remedies. Until statutory and case law are more fully developed, it is vitally important within all the correctional fields that there should be established and maintained reasonable norms and rem-

edies against the sorts of abuses that are likely to develop when men have great power over their fellows and where relationships may become both mechanical and arbitrary."

This analysis, which I have quoted from the Manual of Correctional Standards, third edition, 1966, page 279, of the American Correctional Association, the Professional Association of Prison Administrators, provides the framework for the task of this subcommittee.

As these hearings progress, you will hear testimony from witnesses both indicting and defending various aspects of the parole system. While it is difficult to talk about parole today without condemning the manner of its implementation, I believe that legislation can be most useful when it is the result of an objective problem-solving effort. I also believe that problems are not best solved when the use of the *ad hominem* is the main tool selected by those with problem-solving responsibilities.

I think we can all agree that the present system of parole, in its entirety, is in pretty bad shape. Those of us with the opportunity to speak to prison inmates are aware of their consistent objections to the parole determination process objections which have been made by criminologists and others professionally absorbed in the many problems of corrections.

The prisoners most often does not know and is not informed as to what he must accomplish—procedurally and substantively to obtain parole. He is unsure of what criteria the parole board member, or the hearing examiner, will rely upon. He has heard from other inmates who have experienced a determination hearing that he will be asked about his crime and whether he is sorry he committed it, and about where he will live and work. He is also told that the hearing will take from 3 to 15 minutes, and that if he is turned down he will never be told why or what he must do to achieve success his next time around.

The prisoner is not the only one dissatisfied. The corrections profession itself, as indicated by the quotation with which I began these remarks, realizes the inadequacy of the present system. The courts, including the Supreme Court of the United States, are beginning to accept cases which raises various parole issues in constitutional terms.

The people—at least those who are aware of and understand the boomerang effect of current parole dysfunctionality—are more and more coming together to form groups whose objective is to increase our chances to live under a system of law by bringing order to the many components of the criminal legal system.

It is no secret that many of us have faulted the legislatures—State and Federal—for creating and maintaining a system of unbridled discretion—which, in fact, is no system at all. Beyond argument is the fact that the abuses predicted by the American Correctional Association have, in fact, developed.

Ironically, one of the abuses has been secrecy which, in turn, has been the atmosphere in which parole expertise—such as it may be—has been developed. Surely, we must now admit to ourselves that if there is any expertise in the Government's execution of its parole function, such expertise has nothing to do with the ability to make correct and informed parole decisions.

The problem which we want to solve, then, can at least be identified with some insight. Most simply stated, we must ask ourselves: what should we aim for when dealing with a mechanism whose function is to

release persons from another mechanism which was supposed to provide for their correction?

And, secondarily, what weight should we give to the facts that we are, as of yet, unable to determine why most anyone commits a crime; we are, as of yet, unable to provide a corrective regime in a closed institution; we are, as of yet, unable to predict who upon release from such an institution will commit a crime; and, finally, we are, as of yet, unable to run a criminal justice system which, by any measure of fairness, includes persons who are not either black or brown, or poor in the prison population?

In his recent opinion in *Morrissey* v. *Brewer*, where the issue was whether due process applies to the parole system, Chief Justice Burger stated that the "purpose [of parole] is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed."

I think it entirely appropriate that this subcommittee adopt the Chief Justice's definition and apply it when considering not only the propriety and utility of current parole practices, but also those proposed to take their place.

Because of the many problems which face, and are caused by today's parole system, the need for comprehensive change is manifest. The concept of parole itself, including its discretionary application, conditions of parole, and revocation, might well be discarded without doing harm to the goal of public safety.

On the other hand, and assuming that concept's continuation, this subcommittee at the very least should premise any forthcoming legislation on one basic assumption: the entire parole process, if it is to have any chance for success as a crime-prevention mechanism, must be opened up and made fair. Unless this is done, it is doomed to failure as such a mechanism, notwithstanding our limitless capacity for self-deception.

Thus, the provisions of S. 3185 which introduce a quantum of due process to the parole determination hearing are constructive toward that end. I would, however, urge that legislation provide for disclosure of records to be considered by the paroling authority, as does the current subcommittee draft. Furthermore, due process should accompany any proceeding which might result in lengthening or reimposing a term of imprisonment.

Senator BURDICK. Now, at that point, disclosure of records, did you hear the statement of the parole official that testified this morning?

Mr. TEPPER. I could catch bits and snatches of Mr. Sigler's responses.

Senator BURDICK. You didn't hear it all.

His reason for denying records was that many of them contain statements that would be very harmful to rehabilitation. A statement from his wife, a statement from a neighbor, a statement from a friend which was given in secrecy, given in a private nature—if that became public, that would be very disruptive to the parolee. Could some exception be made of that, in your view?

Mr. TEPPER. I don't have much question that those exceptions might be included within the subcommittee's draft. However, on the other hand, I think that a choice at some point has to be made between the quest for truth, the rationale behind the factfinding process, and the type of consideration which Mr. Sigler addresses.

I think that in making this determination, this subcommittee should

require some kind of supporting data from witnesses who appear here and who rely on what some of us thing of as impressionable or intuitive reasoning. We could, for example, compare that portion of Mr. Sigler's testimony to the trial process where, although a wife may not be permitted to testify against her husband, others could offer testimony that might be harmful to his adequate care or rehabilitation should he be convicted. But no one suggests that this kind of testimony be taken by the courts secretly. I think it is important to give the greatest weight to those factors which have some rational basis behind them.

Senator BURDICK. How do you separate the legitimate from the confidential without exercising this discretion?

Mr. TEPPER. Well, the types of discretion needed—the type of decisions regarding discretion will have to be made, throughout the entire parole process, regardless of the legislation which comes out of these hearings and comes through the House. I think that perhaps in this area it might be most helpful to the subcommittee to consider what kind of protection needs to be included in this legislation to insure that where discretionary judgments and decisions are made, there is some mechanism for guarding against abuse of that discretion, and for guarding against decisions that are capricious.

It is no secret that in the Federal system there is an indication in the file jacket of the prisoner as to whether he is believed to be a part of organized crime, and that is often an automatic disqualifier from parole. This is the kind of decisionmaking reasoning that the Parole Board would not openly want to admit. They would not want to tell the person that he did not make parole because he was thought to be a member of organized crime. Unless the legislation which comes out of these hearings allows for protection against that kind of discretionary judgment, we are not going to have advanced very far, at least in the area of abuses of discretion.

This subcommittee should also recognize that all of the due process in the world will not make up for substantive inadequacies. The decision to grant or withdraw liberty is, perhaps without exception, the most important decision that a government can make affecting the life of its citizens. Caging human beings is too important and too powerful an alternative to be continued into the 21st century as a secretly and haphazardly utilized prerogative of inexpert administrators.

To the extent that we allow this determination to be made without optimum safeguards, we demean the philosophical underpinnings of our American ethic. Thus, you must insure that the person or persons to whom we entrust this vital function discharge their duties pursuant to standards which are the best that we can devise.

S. 2383, as proposed, sets forth four factors to be relied upon in making such a decision: compliance with institutional rules; self-efforts toward rehabilitation; reasonable probability of lawful conduct; and compatibility with the welfare of society.

One could testify at length on the tenuous appropriateness of the first two factors given the current conditions of life in today's prisons; on the third, in view of our present abilities to predict behavior; and, on the fourth, as to what this kind of condition means in terms of how it may really be used.

But, all of this notwithstanding, if the inmate has satisfied each of the four criteria, should the board, as this proposal permits, nevertheless have the discretion to deny parole? How could such an exer-

cise of power be justified as a valuable component of a system whose goal is to combat crime?

The advisory council proposed by S. 2462 might prove a useful resource for coordination of the criminal justice system internally and with other governmental responsibilities. However, the bill noticeably lacks requirements which would insure input by those whose lives are most often regulated by that system, and also requirements which would insure that recommendations are reported out at minimum intervals.

S. 3674 properly includes parole time in sentence computation but overlooks credit for good time. That full credit for street time and good-time should apply to parole is not only rational, but manifest from the Government's consistent position that a person on parole is actually serving his sentence on the street.

I might add that this rationale was one put before the Court by government in *Morrissey* vs. *Brewer*, and it was commented on by the Chief Justice.

The subcommittee's draft contains many advances over the present system which will help to open up the parole process and make it more fair. There are many similarities between it and H.R. 13118, an indication that members of both bodies have recognized the obvious relationship between fairness and the general public interest.

In consideration of time problems, I would refer you to the testimony of W. Anthony Fitch and that of mine, given at hearings before Subcommittee No. 3 of the House Judiciary Committee on H.R. 13118. However, I would suggest at this point that you give careful consideration to the substantive distinction between parolees who technically violate their parole conditions and those who are charged with criminal offenses, not only in terms of the propriety of the use of arrest, but also to the power to evoke parole status.

In sum, new parole legislation should provide for:

1. A determination hearing which affords the kind of due process essential to fairness. Minimally, such legislation should require representation by counsel, access to and opportunity to rebut information in the inmate's file, and, in case of denial of parole, a comprehensive opinion in which the Board must explain its reasoning and the facts upon which it relied.

2. Specific standards pursuant to which parole conditions may or may not be imposed, including the requirement that the lack of available space in a residential treatment center shall not be used as a reason for denying parole.

3. Revocation standards and procedures which would prevent revocation in the absence of criminal conduct and which would insure the implementation of due process.

4. Mechanisms calculated to induce the various State systems to incorporate minimum standards of due process, such as conditioning the grant of Federal funds to compliance with such minima.

5. Full credit and good time for parole street time.

6. Restrictions upon the use of arrest and incarceration for noncriminal conduct which may contravene a parole condition.

7. Administrative and judicial appellate review of contested decisions.

Finally, let me just say that historically, in order to get released from prison a prisoner has had to adopt a behavioral approach almost

exactly opposite to that necessary to avoid reincarceration. More specifically, we have stripped the inmate of the need or responsibility to make decisions or have any input into his or her day-to-day life.

One of the more important attributes of the legislation before you is that the inmate's opportunity to influence at least one aspect of the corrections process is enhanced. Perhaps this approach, if it becomes a trend, is the type of phenomenon which will transform "corrections" from a euphemism to a reality.

Thank you.

Senator BURDICK. Well, the staff doesn't have any questions and the question I had has been asked, and you have been very helpful, and I appreciate this testimony. But to repeat what I have said, to make this really work you would have to have some discretion along the way. You can't put everything in neat little molds.

Mr. TEPPER. I think you are right, Senator Burdick. We are talking about human beings and their conduct and their behavior. I think many years from now people will look back at this particular point in time and realize how little we know about conduct and behavior, and what we try to do to shape it. So it is very difficult for us to come up with comprehensive standards that would embody everything.

I think we ought, to, however, make the attempt to devise the best kind of standards which we can, as specifically as possible. When discretion is utilized, for instance, to consider factors that would not be on a list set forth as factors, we should require the hearing examiner to announce those factors to the inmate and his representative and to allow him to rebutt or have input into those factors. We need certain standards and safeguards to insure that the activity of a system which traditionally since 1790, when we began prisons, and about 1817, when we began parole, has been able to operate in secrecy, perhaps the most secret of all governmental functions today, is accountable to somebody.

I can't think of any agency that is as unaccountable for its actions as the Corrections Department. I can't think of another governmental agency which has failed as consistently as the Corrections Department. And I am not talking so much in terms of the men involved, but of the concepts. The concepts need reinvestigation and I can't think of another governmental agency with the type of responsibilities that Corrections has which is not subject to the provisions of the Administrative Procedures Act.

I think it is incumbent upon any of us who want to bring some kind of rationale to the corrections system, and to that portion of it which is parole, that we begin to produce the kinds of safeguards which will at least implement that system, and make it realize that there are people who are concerned that will be looking over its shoulder, so the types of decisions it makes are made on the basis of standards that it would not be ashamed to admit openly, and for reasons that could be given without any hesitation.

Senator BURDICK. Thank you very much.

Mr. TEPPER. Thank you, sir.

Senator BURDICK. We will be in recess until 2 o'clock.

(Whereupon, at 12:12 p.m., the subcommittee recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator BURDICK. Mr. Tepper?

STATEMENT OF JULIAN TEPPER, DIRECTOR (NLADA), NATIONAL LAW OFFICE, WASHINGTON, D.C.—Resumed

Mr. TEPPER. Yes, sir.

Senator BURDICK. I wonder if you would return to the stand. The staff has a few questions.

Mr. TEPPER. Yes, sir.

Senator BURDICK. In your opinion, should the parole agency be independent of the Department of Justice?

Mr. TEPPER. Yes, sir; I think it should. The Department of Justice has basically a prosecutorial function.

One of the problems that I, other criminologists and other lawyers have had, is to try to make people realize that the corrections function is quite different from the police function and the prosecuting function. Unfortunately, running through many decisions that each of these bodies has to make are decisions that do seem to synthesize the functions.

Thus, the police are interested at this time—this is by way of example—in getting into organized crime. The prosecutor is interested in prosecuting organized crime, and also they both are interested in not having members of organized crime out in the streets, let me say. Basically, these kinds of considerations have nothing to do with the corrections functions. I think—in fact, I think I have picked a rather poor example because of the kinds of effort we have made in the area of organized crime. The same runs true in other areas.

The techniques, the knowledge, the science, the expertise, the concerns of a Department of Corrections and of a parole agency have to be developed in an atmosphere that can allow them to divorce from its function the kinds of consideration that another agency such as the Department of Justice cannot depart from.

Senator BURDICK. You feel that the parole board should have the power to issue subpenas to require evidence and testimony at parole hearings?

Mr. TEPPER. Yes, on both sides. Subpena power should be available One of the problems in one of the bills, I recall, is the calling of only voluntary witnesses. I wasn't quite sure how that was to be read. If a parolee or potential parolee calls a witness and that witness does not wish to appear, the inmate ought to have the right to cause his appearance, as the Government should in the event the testimony would be relevant to whether or not the parole should be granted.

Senator BURDICK. What is your parole concept?

Mr. TEPPER. If you mean—if you mean the initial determination and where the burden should lie with regard to whether or not parole should be granted, I think, given certain initial minimum requirements, that the presumption should be in the favor of parole to the extent that the Government is required to make a showing that the person—that there are substantial reasons to believe that the parolee would be engaged in criminal activity; and also the kinds of activity, not the particular crime—the kinds of activities that the predictions are made about; and also the factors relied upon and how those factors lead the agency to believe that he will engage in those activities, or perhaps—I am not so strong about this—if there is a high likelihood that the person will not act in accordance with very serious and substantive conditions for parole. It would have to be very serious and directly

related to the ability to remain on parole. Otherwise, I don't think that should be a consideration.

I think one of the things—just to finish off that answer—one of the things that should be taken into consideration in considering parole is that everybody—everybody agrees, almost without exception—the Government study commissions, bar study commissions, the inmate, professors, criminologists—all agree that the regime and the experiences inside the prisons certainly do not correct behavior. People often put it in terms of causing more crime. In the people's interests, the Government's interests, the Government as it represents the public interest, the Government should have to show why a person should be kept in such noncorrective regimes rather than be released.

One of the things that should go along with parole, however, is an increased appropriation for, and studies for, and examination of, community projects that could be made available to the newly released inmate. If you recall, in my opening statement, I said that the lack of a residential treatment should not be a reason for denying parole.

I think it is perfectly proper at this point, a perfectly proper condition for parole, that the person reside in a treatment center. But I think there, rather than cause people not to be paroled because there are not enough centers, or cause them to stay in prison until space opens up, that the number should be expanded to at at least match the need that comes up.

Senator BURDICK. Do you think there should be a judicial review of the parole hearing?

Mr. TEPPER. Most definitely.

Senator BURDICK. I am not talking about an administrative review.

Mr. TEPPER. Let me first say that I would answer, "Yes." I think some of the problems that have been raised with judicial review are, first, unreal, and, second, the ones that are real tend to be oliberated by improving the administrative decisionmaking process. I think I have spoken to some of the decision—the administrative decisionmaking processes, and the need to improve them, to reduce the type of events that lead to judicial review.

It seems to me almost improper for a person from the parole department to use as his reason for not allowing judicial review, the expense of counsel. I don't see how that is related to the paroling functions and the paroling department's functions. The availability of counsel has never proved to be as serious as people have suggested.

Second, a review of pro se cases before the Federal courts has found among other things, that Federal courts were not burdened extensively by pro se petitions. The distinction should be made between the form of the pro se petition and the substance of the pro se petition.

A study under the Department of Justice, LEAA, National Institution of Law Enforcement and Criminal Justice—I have a summary report of that study which states that the vast majority of requests for assistance were regarded as nonfrivolous. Eighty-six percent were——

Senator BURDICK. In what case?

Mr. TEPPER. The area of institutional petitions, habeas corpuses, and so forth.

Senator BURDICK. We had testimony just to the opposite.

Mr. TEPPER. I am not talking about testimony; I am talking about a study done under the auspices of LEAA. That is why I think——

Senator BURDICK. Is that nationwide? I understand that a very small percentage of pro se writs are granted.

Mr. TEPPER. Oh, no; there is a distinction. You are right. And that is what gets us into the discretion of what I am talking about. The substance may be nonfrivolous, as the study points out, but the form of the language—the lack of the legal expertise in drawing them up—just about vitiates their efficacy.

The administrative conferences, the judges that I have spoken to, and from my own experience—I was a legal aid attorney in New York and my first job was to argue coram nobis cases up in the New York system, and I found an average petition could take me a full day to read and understand and extract the relevant material and then rewrite. This is what is causing a time problem and any burdens in the court system.

I think that improving the administrative structure we have talked about, providing counsel at the initial stages so that the need for appeal is reduced and so that the client can be counseled on whether or not there is any substance to his appeal—all of this would ameliorate the kind of prospective horrors that we have been told about.

Also there should be judicial review because this is a governmental function that deals with men's lives and their liberty. This is the most important aspect of our system of government and, now, I can't think of—I really can't think of any other governmental function——

Senator BURDICK. He had a trial before a jury of his peers.

Mr. TEPPER. I beg your pardon?

Senator BURDICK. He had a trial before a jury of his peers. He had due process then.

Mr. TEPPER. Certainly. That is another discretion that I was trying to point out earlier. The issue at the trial is whether or not he committed an offense, and in some cases, what was his frame of mind when the act was committed. The issue as to release is another issue.

Senator BURDICK. But you are saying that a man can be convicted of armed robbery and receive 5 years, then he has a vested right, a right to that parole. If he doesn't get that right, if he exercises that right, he can appeal to the judicial body.

Mr. TEPPER. I believe what we are talking about is not the right to parole, but the presumption for the parole given certain conditions, one being that the inmate has served a minimally required portion of his sentence.

Senator BURDICK. You just don't have the judicial review without a right.

Mr. TEPPER. You do have a right, Senator Burdick, to have judicial review of a governmental determination, even if it is a discretionary determination, and even if that right is limited to whether or not it is being abused.

Senator BURDICK. You have to hold that hearing in the first place, and that is all discretionary. But what you are saying is that every man has a right to that parole, if denied, he has a right to appeal?

Mr. TEPPER. No. What I think I am saying—is a parole process then is continued, the process would have to be applied equally under the equal process concept of the Constitution. If a parole hearing can at

least be provided: if it is provided for one, it is provided for all. I don't think that is any problem.

The eligibility requirements might mean that different people would come in at different times, but the process and the procedures have to be, under the eyes of the law, equal. I am not talking about the right to parole. What I am talking about is a right to fairness in a system which deals with parole. I don't think there is any question about that.

The only question now is what does that right mean? What does it mean that we have to be fair? How far do we have to go to be fair? I would suggest to the subcommittee that rather than think about this problem in terms of rights, although of course in a minimum——

Senator BURDICK. You can' talk about it if you don't have a right.

Mr. TEPPER. I understand that. What I am talking about is thinking about the kind of structure and the tools. What we ought to be thinking about is, what is the problem and what is the best mechanism to solve that problem. You will, in addition to constitutional rights already existing, be creating statutory rights in your legislation.

You will be, perhaps, creating a procedure that might implement the constitutional rights to counsel or, if the inmate prefers, substitute counsel, a fellow inmate or a staff member. Now, for instance, if the hearing then takes place—if the hearing body or person denies him that right to counsel or counsel substitute, that would be a reviewable issue.

Senator BURDICK. We haven't decided that yet.

Mr. TEPPER. What I am talking about is the review of the rights that you will be creating under the statute as well as constitutional rights that have to be taken into account, especially in the absence of any further legislation on this issue.

I would just point out to the subcommittee that the Chief Justice of the United States, in the *Morissey* opinion—although the issue revolved around parole revocation—stated the issue that we are confronted with today, which is "whether due process applies to the parole system."

Senator BURDICK. What did he say?

Mr. TEPPER. He declared in the case of the parole revocation that it did.

Senator BURDICK. That it did?

Mr. TEPPER. That it did; yes.

Senator BURDICK. That is different from granting parole in the first instance.

Mr. TEPPER. Granting parole in the first instance, of course, is part of the parole system and is covered in the way he phrased the general issue. It is only a matter of time, I hope, until legislatures act; then it would be covered. I would strongly urge all legislatures at this point to try to develop the kind of mechanisms that will not necessitate judicial consideration of these kinds of problems.

Senator BURDICK. Subsection 3 of section 4203 of the Parole Commission Act adequately handled the problems of inmate access to material—censored material—in the institutional file.

Mr. TEPPER. Let me spell that out, because there was one portion that I wanted to address more specifically.

Let me begin by saying that from the institution's position, and that in any—and I am speaking as a person who has been involved in cor-

rections, not just from an adversarial point of view, academically—I think the institutional dangers that the Parole Board and other institutional administrators fears are protected by these provisions. I think that even situations that Mr. Sigler spoke to this morning would have been protected by these provisions. I don't think there is much doubt about that.

I have a little problem with the wording of subsection 2 on page 9, which begins on line 7, which states that among the documents which could be excluded is any document which contains information which was obtained by a pledge of confidentiality. I think that opens the door to making all documents anything they want. They could put it under "confidentiality." The wording should be more direct, dealing more with the need to protect the source rather than alleged confidentiality.

Senator BURDICK. It is also a fine difference between the two. There is a slight difference between "protecting the source" and so forth.

Mr. TEPPER. The confidentiality and the source. It allows the Government to just exclude everything by making it of confidential nature; where it needs to protect the source, at least it involves a different kind of consideration.

Senator BURDICK. There may be a distinction but it is very slight.

Mr. TEPPER. It may not seem great and we sit here and talk about it; when you get to the access of the files and keeping the files secret it is going to make a real difference if—right across the board—make every file could be defined as of a confidential nature.

Senator BURDICK. All right. What do you think of the concept of good time, whereby the parolee can go before the Board for early termination by meeting all of his parole conditions.

Mr. TEPPER. I think it is rather inconsistent to not include good time or even street time within the parole process. If I recall correctly, the subcommittee draft at this time on revocation of parole would allow a determination to be made as to how much more time the person has to serve, which could not exceed—he could not go back for more time than he had when he first went in, but it would not count the time that he was on the street.

The Government has been very consistent in arguing in different forums that the parole period on the street is part of the sentence. The person serving the sentence, according to the Government's position, is serving time on the street. I think this is rather supported by the parole commissions, and the Chief Justice, Chief Justice Burger, in the *Morrissey* case said in determining liberty, a conditioned kind of liberty, the person doesn't have absolute freedom.

There is really no rational basis for not including street time or good time in that period. Now, the same reasons that go for granting good time while he is incarcerated apply to parole periods. As shown, that they can handle the responsibility, there is no reason why that period of time should not be included.

Also, the person who makes early parole will serve a longer time on parole than the person who serves a longer time or is kept longer inside. This is a sort of a paradox. If those two parole decisions themselves were valid, the latter person, quite normally, might have to remain on parole longer, because it may take him longer to get used to the outside than the person who had made parole earlier.

The conditions of parole can be quite severe. The need to report, the problem of an inmate getting a job, the limits on travel, the driver's

license, limits on the kind of work you can do, the limits on with whom you can associate. And I know of cases where parolees have been arrested because of associating with known criminals who work at the same place that they are working, in jobs procured by the prison system.

I would like to point out to the subcommittee, for instance, L. D. Barkley, one inmate who was killed at Attica. He was convicted at the age of 18, I believe, for forging a money order, and his parole was revoked for driving a car without a license. They put him back in Attica on a revocation and he was killed during or just after the Attica disturbances. There are a lot of people who are back in prison under technical violations, which does them and the public no good whatsoever.

Senator BURDICK. What problems do you have with the discussion that an attorney should not be a parole of advocate?

Mr. TEPPER. I think that argument breaks down when the substitute offer is made that other people can be at the parole determination—and from Mr. Sigler's——

Senator BURDICK. One of the other people can. What do you mean by "other people"?

Mr. TEPPER. Fellow inmates, staff people. I believe these are the alternatives Mr. Sigler stated in his testimony this morning that might be able to represent them at the determination hearing.

Senator BURDICK. Those are people with facts. They are not people advocating; they are the ones with the facts.

Mr. TEPPER. I wasn't talking about as a witness. It is my understanding—and correct me if I am wrong—Mr. Sigler left leeway for nonlawyers to represent inmates in the determination hearings, but not for lawyers.

Just to state it in simple terms: a person in prison today, even in the federal system, has very little input into even creating the kind of conditions necessary to qualify for parole. The person at least has to have a parole plan, and the parole plan has three requirements: he must have a place to live, a place to work and a parole adviser.

A person in prison today finds it very difficult, the indigent finds it very difficult to obtain the kinds of services to fill those requirements. This is the kind of service that a lawyer can provide at a determination hearing. This would allow for a more orderly and tidy presentation, marshaling of the facts, looking out for the inmate's interest, and arguing why he should be paroled.

He would also serve as the type of person who would offer at least some assurance that the hearing will, not be what is commonly referred to as a 3-minute hearing—that you don't go before the 3-minute board. The evidence that this does take place is too strong to ignore any more. Even in the federal system, quite often the hearing consists of, "Do you have a place to work? Do you have income to support yourself? Do you have a place to live? And tell us about the crimes that you have committed." That is the guts of a parole determination hearing.

Senator BURDICK. Well, what can a lawyer do about that? Can you find him a place to live, find him a job, and so forth?

Mr. TEPPER. A lawyer can do that. I have done that for a person who is in a Federal prison.

Senator BUDICK. He is not a lawyer; he is a helper. Legal ability is not involved.

Mr. TEPPER. I think you will find that since we are especially interested in the diversion processes, which you heard testimony about earlier today, that the whole criminal process is expanding greatly. Years ago, lawyers were among the worst violators of protecting inmates' rights. Of course, when a person—after they were convicted, their lawyers just gave up.

Today, the ability to avoid a trial by using a pretrial diversion project means that the lawyer helps the person get into the programs, get into jobs. That has been recognized by LEAA, which has projects going on in the District of Columbia, and Santa Clara, Calif., and other places.

Today, in the Federal "parole plain" area, this is about all the lawyer can do in that determination. You don't ask, or dare ask, to be present. That would almost certainly mean that your client would not get parole.

Senator BURDICK. He can plead the fact that his client is a candidate for prediversion, and you shouldn't take the course of law. He can make that trial, and he can do household chores.

Mr. TEPPER. No; no. He does those things by a letter in the file or a telephone call to the parole board, or to the hearing examiner. His presence at the hearing, I don't think it can be disputed that his presence at the hearing alone would be a stimulus to the board to get down to some real factfinding and not more formalities. I think that this is a benefit.

Senator BURDICK. The point I am trying to make, that once we establish that the man is entitled to a lawyer during this parole hearing, we have to take the next step, if he doesn't have one.

Mr. TEPPER. That is right.

Senator BURDICK. We are getting into money, time, and so forth.

Mr. TEPPER. I think where we have made these kinds of decisions where we are going to get into money and time, when the issue of poverty arises, we have developed to the point that such money and time is a very good investment, and we are talking about all this.

Senator BURDICK. I think we need a lot of money in this area also. We need a lot of money for a lot of things, and for this area, too, that we don't have.

Mr. TEPPER. It is a slow process, isn't it?

Senator BURDICK. Thank you.

Mr. TEPPER. Thank you.

(The full prepared statement of Julian Tepper will appear at this time:)

TESTIMONY BY JULIAN TEPPER, DIRECTOR, NLADA NATIONAL LAW OFFICE

"To an even greater extent than in the case of imprisonment, probation and parole practice is determined by an administrative discretion that is largely uncontrolled by legal standards, protections, or remedies. Until statutory and case law are more fully developed, it is vitally important within all the corectional fields that there should be established and maintained reasonable norms and remedies against the sorts of abuses that are likely to develop when men have great power over their fellows and where relationships may become both mechanical and arbitrary."

This analysis, which I have quoted from the Manual of Correctional Standards (third edition, 1966, p. 279) of the American Correctional Association, The Professional Association of Prison Administrators, provides the framework for the task of this subcommittee.

As these hearings progress, you will hear testimony from witnesses both indicating and defending various aspects of the parole system. While it is difficult to talk about parole today without condemning the manner of its implementation, I wish to set out on a slightly different course. I believe that legislation can be most useful when it is the result of an objective problem-solving effort. I also believe that problems are not best solved when the use of the*Ad Hominem* is the main tool selected by those with problem-solving responsibilities.

I think we can all agree that the present system of parole, in its entirety, is in pretty bad shape. Those of us with the opportunity to speak to prison inmates are aware of their consistent objections to the parole determination process—objections which have also been made by criminologists and others professionally absorbed in the many problems of corrections. The prisoner most often does not know and is not informed as to what he must accomplish—procedurally and substantively—to obtain parole. He is unsure of what criteria the parole board member, or the hearing examiner, will rely upon. He has heard from other inmates who have experienced a determination hearing that he will be asked about his crime and whether he is sorry he committed it, and about where he will live and work. He is also told that the hearing will take from three to fifteen minutes, and that if he is turned down he will never be told why or what he must do to achieve success his next time around.

The prisoner is not the only one dissatisfied. The corrections profession itself, as indicated by the quotation with which I began these remarks, realizes the inadequacy of the present system. The courts, including the Supreme Court of the United States, are beginning to accept cases which raise various parole issues in constitutional terms. The people—at least those who are aware of and understand the boomerang effect of current parole dysfunctionality—are more and more coming together to form groups whose objective is to increase our chances to live under a system of law by bringing order to the many components of the criminal legal system.

It is no secret that many of us have faulted the legislatures—State and Federal—for creating and maintaining a system of unbridled discretion—which, in fact, is no system at all. Beyond argument is the fact that the abuses predicted by the American Correctional Association have, in fact, developed. Ironically, one of the abuses has been *secrecy* which, in turn, has been the atmosphere in which parole expertise—such as it may be—has been developed. Surely, we must now admit to ourselves that if there is any expertise in the Government's execution of its parole function, such expertise has nothing to do with the ability to make correct and informed parole decisions.

The problem which we want to solve, then, can at least be identified with some insight. Most simply stated, we must ask ourselves: what should we aim for when dealing with a mechanism whose function is to release persons from another mechanism which was supposed to provide for their correction? And, secondarily, what weight should we give to the facts that: (1) we are, as of yet, unable to determine why most anyone commits a crime; (2) we are, as of yet, unable to provide a corrective regime in a closed institution; (3) we are, as of yet, unable to predict who upon release from such an institution will commit a crime; and, finally, (4) we are, as of yet, unable to run a criminal justice system which, by any measure of fairness, includes persons who are not either black, or brown or poor in the prison population?

In his recent opinion in *Morrissey* v. *Brewer*, where the issue was whether due process applies to the parole system, Chief Justice Burger stated that:

The purpose [of parole] is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed."

I think it entirely appropriate that this subcommittee adopt the Chief Justice's definition and apply it when considering not only the propriety and utility of current parole practices, but also those proposed to take their place.

Because of the many problems which face, and are caused by today's parole system, the need for comprehensive change is manifest. The concept of parole itself, including its discretionary application, conditions of parole, and revocation, might well be discarded without doing harm to the goal of public safety. On the other hand, and assuming that concept's continuation, this subcommittee at the very least should premise any forthcoming legislation on one basic assumption: the entire parole process, if it is to have any chance for success as a crime-prevention mechanism, must be opened up and made fair. Unless this is done it is doomed to failure as such a mechanism, notwithstanding our limitless capacity for self-deception.

Thus, the provisions of S. 3185 which introduce a quantum of due process to the parole determination hearing are constructive toward that end. I would, however, urge that legislation provide for disclosure of records to be considered by the paroling authority, as does the current subcommittee draft. Furthermore, due process should accompany any proceeding which might result in lengthening or reimposing a term of imprisonment.

This subcommittee should also recognize that all of the due process in the world will not make up for substantive inadequacies. The decision to grant or withdraw liberty is, perhaps without exception, the most important decision that a government can make affecting the life of its citizens. Caging human beings is too important and too powerful an alternative to be continued into the 21st century as a secretly and haphazardly utilized prerogative of inexpert administrators. To the extent that we allow this determination to be made without optimum safeguards, we demean the philosophical underpinnings of our American ethic. Thus, you must ensure that the person or persons to whom we entrust this vital function discharge their duties pursuant to standards which are the best we can devise.

S. 2383, as proposed, sets forth four factors to be relied upon in making such a decision: compliance with institutional rules; self-efforts toward rehabilitation; reasonable probability of lawful conduct; and compatability with the welfare of society. One could testify at length on the tenuous appropriateness of the first two factors given the current conditions of life in today's prisons; on the third, in view of our present abilities to predict behavior; and, on the fourth, as to what this kind of condition means in terms of how it may really be used. But, all of this notwithstanding, if the inmate has satisfied each of the four criteria, should the board, as this proposal permits, nevertheless have the discretion to deny parole? How could such an exercise of power be justified as a valuable component of a system whose goal is to combat crime?

The advisory council proposed by S. 2462 might prove a useful resource for coordination of the criminal justice system internally and with other governmental responsibilities. However, the bill noticeably lacks requirements which would ensure input by those whose lives are most often regulated by that system, and also requirements which would ensure that recommendations are reported out at minimum intervals.

S. 3674 properly includes parole time in sentence computation but overlooks credit for good-time. That full credit for street time and good-time should apply to parole is not only rational, but manifest from the government's consistent position that a person on parole is actually serving his sentence on the street.

The subcommittee's draft contains many advances over the present system which will help to open up the parole process and make it more fair. There are many similarities between it and H.R. 13118, an indication that members of both bodies have recognized the obvious relationship between fairness and the general public interest. In consideration of time problems, I would refer you to the testimony of W. Anthony Fitch and that of mine, given at hearings before Subcommittee No. 3 of the House Judiciary Committee on H.R. 13118. However, I would suggest at this point that you give careful consideration to the substantive distinction between parolees who technically violate their parole conditions and those who are charged with criminal offenses, not only in terms of the propriety of the use of arrest, but also as to the power to revoke parole status.

In sum, new parole legislation should provide for:

1. A determination hearing which affords the kind of due process essential to fairness. Minimally, such legislation should require representation by counsel, access to and opportunity to rebut information in the inmate's file, and, in case of denial of parole, a comprehensive opinion in which the board must explain its reasoning and the facts upon which it relied.

2. Specific standards pursuant to which parole conditions may or may not be imposed, including the requirement that the lack of available space in a residential treatment center shall not be used as a reason for denying parole.

3. Revocation standards and procedures which would prevent revocation in the absence of criminal conduct and which would ensure the implementation of due process.

4. Mechanisms calculated to induce the various State systems to incorporate minimum standards of due process, such as conditioning the grant of Federal funds to compliance with such minima.

5. Full credit and good-time for parole street time.

6. Restrictions upon the use of arrest and incarceration for non-criminal conduct which may contravene a parole condition.

7. Administrative and judicial appellate review of contested decisions.

Finally, let me just say that historically, in order to get released from prison a prisoner has had to adopt a behavioral approach almost exactly opposite to that necessary to avoid reincarceration. More specifically, we have stripped the inmate of the need or responsibility to make decisions or have any input into his or her day-to-day life. One of the more important attributes of the legislation before you is that the inmate's opportunity to influence at least one aspect of the corrections process is enhanced. Perhaps this approach, if it becomes a trend, is the type of phenomenon which will transform "corrections" from a euphemism to a reality.

Senator BURDICK. Our next witness is Robert J. Landman, Sr., Washington, D.C.

STATEMENT OF ROBERT J. LANDMAN, SR., WASHINGTON, D.C.

Mr. LANDMAN. Thank you, Senator Burdick.

Senator BURDICK. You may proceed.

Mr. LANDMAN. Thank you.

In addressing you, Senator, and those of your colleagues who are absent, to the record, I want to thank you for giving me this opportunity to appear before your committee and it is gratefully appreciated. This is particularly so because throughout America there are earnest quests for correctional tools that, in fact, correct human behavior against recidivism. Parole is one important feature adopted to the criminal justice process that, conceptually at least, once predicted promise of success.

We find, however, that abuses of the parole authority have greatly paralyzed the success factor that parole sought to realize.

If you think I am not here to grind an ax; well, I am. It may be somewhat edifying to note that I have spent very nearly 16 years as a prison inmate in both Federal and State penitentiaries. In those 16 years, my own experiences with the parole systems have been quite limited to:

1. A single appearance for Federal parole consideration and being told that my parole was received in the courtroom, to wit, a 5-year sentence for bank robbery;

2. A Federal mandatory release, as if on parole, which vicious practice served to keep me under Federal restraints for all of the near 16 years;

3. No consideration for parole at all during 6 years and 5 months of legal eligibility under the Virginia parole law, principally because of the existence of a Federal parole violator detainer, and, second, because I chose to criticize the Virginia prison system in wholly democratic ways.

In my Federal parole revocation proceeding at Atlanta, once we got to it, I asked for all due process safeguards which were decided in *Morrissey* v. *Brewer* decision. None of those were considered essential to that hearing.

By and large, judges and juries fix imprisonment sentences on the basis of not only statutory limitations but give great weight to the minimum term at which the defendant becomes eligible for parole. In effect, the usual maximum term imposed is three or four times longer than the minimum term at parole eligibility, because this sentence-fixing forum believes the defendant will serve the minimum term of imprisonment and be paroled.

Where parole is the unspoken judicial intent, considering reasonably good behavior of the inmate, such intent most often is defeated by the administrative policies and practices of the paroling authorities. This is a classic example of how parole and corrections officials exert more influence on the life of a committed offender than do judges and juries.

It is pertinent to say to you that even in the case of Federal imprisonment imposed under title 18 of the United States Code, § 4208(a)(2), which renders the prisoner "eligible for parole at such time as the Board of Parole may determine," the Board has adopted setoff practices that nullify the legislative intent for optimum time parole grants.

Universally, America's paroling agencies have exercised their powers almost exclusively to regulate prison populations at maximum, or excess levels, in the institutions. Populations of institutionalized offenders continue to increase at a faster rate than the U.S. population growth and faster than new prisons can be built. This policy will guarantee overcrowding into the foreseeable future if present policies are continued. When prison admissions exceed the rate of releases for expiration of sentence, the balance is struck through parole grants. And very often the "expert" selection of eligible prisoners paroled turns out to be a poor guess, as the parole violation rate affirms. In short, the grace and discretion framework for administration of parole authority invites, encourages, and infuses arbitrariness and capriciousness into the parole system.

We are here in quest of a corrections-parole tool which will complement other incentives being adopted to motivate behavior change. I am convinced that a reasonably useful prescription plan, individually tailored, jointly devised and adopted by the newly committeed inmate, corrections, and parole, to include training or retraining in demand occupations, relevant academic education, guaranteed parole with a quality job and supportive services, is the kind of incentive that motivates a prisoner, and will sharply inhibit recidivism.

The kind of multipronged approach necessary to achieve lasting correction of behavior with positive cost benefits built in is embodied in Senator Percy's bill, S. 3185—substitute—cited as the "Federal Corrections Reorganization Act."

This bill has, it appears to me, all of the right elements, and only a few modifications to it need be made. If this bill were to become law, it would provide for the implementation of comprehensive corrections, with integrated systems for coordinated delivery of manpower and other supportive human services, which can be so designed to really resocialize and restore the offender within a minimum time frame.

The composition of the advisory council is a representative mix of talent, except that the council should include a manpower specialist. The purposes and functions of the council leave nothing to oversight. I envision real changes and total implementation of the features in this bill in 5 years from adoption, including Federal facilities which would accommodate the district offender disposition board purpose and function.

There ought to be a realistic formula for the determination of the outside size of district boards—based on population, perhaps—with the minimum at five, as stated in the bill. While this bill says nothing about parole revocation procedures, I assume that the council is expected to adopt administrative procedures covering that aspect. Of

course, legal guidance is now found in the Supreme Court opinion in *Morrissey* v. *Brewer*, decided last June 29.

There is a fine provision in this bill relating to the grants of money to States for correctional programs. That is, the determination by the council of many things, particularly the guidelines toward the adoption of fair procedures for effective programs.

I fully recommend the passage of S. 3185, following the two amendments suggested. This will signal a new day in crime-prevention techniques. Anything Congress does short of enactment of this bill shortchanges the Nation and yourselves.

If Congress would shortchange us in corrections, I will tell you how to do it with the passage of other draft bills before you. In that event, it would set the priorities as follows:

S. 3674, introduced by Senator Percy, provides that full credit be given for time served on parole to date of parole violation.

I think there is no doubt that a person on parole is under restraint. This should apply. This provision is a warranted amendment to the present parole system procedure.

S. 2985, introduced by Senator Cook, provides that one-half credit be given for time served on parole to date of issuing the violator warrant. This provision, at parole revocation, is precisely one-half the value of S. 3674.

S. 2383, introduced by Senator Burdick—and no offense intended—provides in all definite term sentence cases exceeding 180 days eligibility for parole after serving one-third or 1 year, whichever is less. This amendment is extremely generous in sentences longer than 3 years. However, it would not likely change anything about the usual practices of the current parole board, unless they were controlled in discretion.

S. 2462, introduced by Senator Cook, provides for broad change in the composition of the present "advisory corrections counsel." This same provision is tacked to the "Parole Commission Act of 1972."

The new composition is a much better mix of agency representation that would no doubt provide a wide range of recommendations in the treatment of Federal offenders. It speaks in terms that "assure the coordination and integration of policies" involving also the private sector, which is part of the approach long overdue.

The unnumbered bill, the "Parole Commission Act of 1972"—I hope it does not find a sponsor. In my opinion, this bill appears to do little more than change the name of the present Federal Parole Board and spend a great deal more money to operate a larger bureaucracy with unchanged policies. Certainly, this bill would help toward implementing the requirements of *Morrissey* v. *Brewer*, which concerns only parole revocation safeguards. Frankly, I do not favor this bill.

I prefer over all of them, S. 3185, with some modification and additional provisions.

Thank you, gentlemen, for your generous indulgence. I am open to your questions.

Senator Burdick. Well, thank you very much. You have added considerably to the hearing because you speak from experience.

You say that you prefer S. 3185, with some modification and additional language, but you did not set out those provisions.

Mr. LANDMAN. I have had some correspondence regarding them, regarding the manpower specialist and the manpower committee, and perhaps the provisions for the revocation proceeding. There may be other minor changes. I haven't had too much of an opportunity to study this and other bills because of work developing national guidelines for the Department of Labor on their comprehensive programs.

Senator BURDICK. What would you add to the revocation procedure?

Mr. LANDMAN. Sir?

Senator BURDICK. What would you add to the revocation procedure?

Mr. LANDMAN. I wouldn't add anything, sir, to the revocation procedures other than what is required by law.

Senator BURDICK. I see.

Mr. LANDMAN. There are provisions, of course, that you must think about. I think the boards should have the subpoena power or at least some manner of obtaining subpoena power in the local courts in the revocation procedure.

There are several things that might be considered in having latitude for the parolee, whose parole is to be revoked, to bring his evidence before the board.

Senator BURDICK. Well, thank you very much for your contribution. Your prepared statement will be made a part of the record at this point.

Mr. LANDMAN. Thank you.

Senator BURDICK. We will be in recess until 10 o'clock tomorrow morning.

(Whereupon, at 2:40 p.m., the subcommittee recessed, to reconvene at 10 a.m., on Wednesday, July 26, 1972.)

PREPARED STATEMENT OF ROBERT JEWELL LANDMAN, SR.

Thank you, Senator Burdick, honorable gentlemen, giving me this opportunity to appear before your committee is gratefully appreciated. This is particularly so because, throughout America there are earnest quests for correctional tools that, in fact, correct human behavior against recidivism. Parole is one important feature adopted to the criminal justice process that, conceptually at least, once predicted promise of success. We find, however, that abuses of the parole authority have greatly paralyzed the success factor that parole sought to realize.

If you think I am not here to grind an axe—well, I am. It may be somewhat edifying to note that I have spent very nearly sixteen years as a prison inmate in both Federal and State Penitentiaries. In those sixteen years, my own experiences with the parole systems have been quite limited to:

(1) A single appearance for Federal parole consideration and being told that my parole was received in the courtroom, to-wit, a five year sentence for bank robbery;

(2) A Federal mandatory release, as if on parole, which vicious practice served to keep me under Federal restraints for all of the near sixteen years; and

(3) No consideration for parole at all during six years and five months of legal eligibility under the Virginia Parole Law, principally because of the existence of a Federal Parole violator detainer, and secondly because I chose to criticize the Virginia prison system in wholly Democratic ways.

By and large, judges and juries fix imprisonment sentences on the basis of not only statutory limitations but give great weight to the minimum term at which the defendant becomes eligible for parole. In effect, the usual maximum term imposed is three or four times longer than the minimum term at parole eligibility, because this sentence fixing forum believes the defendant will serve the minimum term of imprisonment and be paroled. Where parole is the unspoken judicial intent, considering reasonably good behavior of the inmate, such intent most often

is defeated by the Administrative policies and practices of the paroling authorities. This is a classic example of how parole and corrections officials exert more influence on the life of a committed offender than do judges and juries. It is pertinent to say to you, that even in the case of Federal imprisonment imposed under Title 18 of the U.S. Code, S. 4208 (a) (2), which renders the prisoner "eligible for parole at such time as the Board of Parole may determine," the board has adopted set-off practices that nullify the legislative intent for optimum time parole grants.

Universally, America's paroling agencies have exercised their powers almost exclusively to regulate prison populations at maximum, or excess levels, in the institutions. Populations of institutionalized offenders continue to increase at a faster rate than the U.S. population growth and faster than new prisons can be built. This policy will guarantee overcrowding into the foreseeable future if present policies are continued. When prison admissions exceed the rate of releases for expiration of sentence, the balance is struck through parole grants. And very often the "expert" selection of eligible prisoners paroled turns out to be a poor guess, as the parole violation rate affirms. In short, the grace and discretion framework for administration of parole authority invites, encourages and infuses arbitrariness and capriciousness into the parole system.

We are here in quest of a corrections-parole tool which will complement other incentives being adopted to motivate behavior change. I am convinced that a reasonably useful prescription plan, individually tailored, jointly devised and adopted by the newly committed inmate, corrections, and parole, to include training or retraining in demand occupations, relevant academic education, guaranteed parole with a quality job and supportive services, is the kind of incentive that motivates a prisoner, and will sharply inhibit recidivism.

The kind of multi-pronged approach necessary to achieve lasting correction of behavior with positive cost benefits built in is embodied in Senator Percy's Bill, S. 3185 (substitute), cited as the "Federal Corrections Reorganization Act." This bill has, it appears to me, all of the right elements, and only a few modifications to it need be made. If this bill were to become law, it would provide for the implementation of comprehensive corrections, with integrated systems for coordinated delivery of manpower and other supportive human services, which can be so designed to really resocialize and restore the offender within a minimum time frame. The composition of the advisory council is a representative mix of talent, except that the council should include a manpower specialist. The purposes and functions of the council leave nothing to oversight.

I envision real changes and total implementation of the features in this bill in five years, including Federal facilities which would accommodate the district offender disposition board purpose and function. There ought to be a realistic formula for the determination of the outside size of district boards—based on population, perhaps—with the minimum at five, as stated in the bill. While this bill says nothing about parole revocation procedures, I assume that the council is expected to adopt administrative procedures covering that aspect. Of course, legal guidance is now found in the Supreme Court opinion in Morrissey vs. Brewer, decided last June 29th. I fully recommend the passage of S. 3185, following the two amendments suggested. This will signal a new day in crime prevention techniques. Anything Congress does short of enactment of this bill short-changes the Nation and yourselves.

If Congress would short-change us in corrections, I will tell you how to do it with the passage of other draft bills before you. In that event, it would set the priorities as follows:

S. 3674, introduced by Senator Percy, provides that full credit be given for time served on parole to date of parole violation. This provision is a warranted amendment to the present parole system procedure.

S. 2985, introduced by Senator Cook, provides that one-half credit be given for time served on parole to date of issuing the violator warrant. This provision, at parole revocation, is precisely one-half the value of S. 3674.

S. 2383, introduced by Senator Burdick, provides in all definite term sentence cases exceeding 180 days eligibility for parole after serving one third or one year, which ever is less. This amendment is extremely generous in sentences longer than three years. However, it would not likely change anything about the usual practices of the current parole board.

S. 2462, introduced by Senator Cook, provides for broad change in the composition of the present "advisory corrections counsel." This same provision is tacked to the "Parole Commission Act of 1972." The new composition is a much better mix of agency representation that would no doubt provide a wide range of recommendations in the treatment of Federal offenders. It speaks in terms that "assure the coordination and integration of policies" involving also the private sector, which is part of the approach long overdue.

S. 3993, the "Parole Commission Act of 1972." In my opinion, this bill appears to do little more than change the name of the present Federal parole board and spend a great deal more money to operate a larger bureaucracy with unchanged policies. Certainly, this bill would help toward implementing the requirements of Morrissey v. Brewer, which concerns only parole revocation safeguards. Frankly, I do not favor this bill.

I prefer over all of them, S. 3185, with some modification and additional provisions.

Thank you gentlemen, for your general indulgence. I am open to your questions.

TO AMEND PAROLE LEGISLATION

WEDNESDAY, JULY 26, 1972

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2228, New Senate Office Building, Senator Quentin W. Burdick, presiding.

Present: Senators Burdick, Mathias, and Cook.

Also present: James G. Meeker, staff director; Christopher Erlewine, assistant counsel; Ronald E. Meredith, minority counsel; Judith E. Snopek, chief clerk; Orrell D. Schmitz, research assistant; and Rita Highbaugh, minority research asistant.

Senator BURDICK. Our first witness this morning will be the Honorable Bill Brock, Senator from the great State of Tennessee.

Mr. Brock?

STATEMENT OF HON. BILL BROCK, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BROCK. Good morning, Mr. Chairman. I appreciate the opportunity to be here today and, particularly, appreciate the interest that the chairman has shown in. I think, to be one of the most crucial problems this country faces.

Mr. Chairman, with your permission I will submit my remarks for the record and I would like to just summarize them very briefly, if I may.

Senator BURDICK. Without objection, your full statement will be made a part of the record.

(The complete statement of Senator Brock follows:)

PREPARED STATEMENT BY SENATOR BILL BROCK

Our approach to prison reform seeks to address a number of problem areas. There is a never-ending call for consistent punishment for like crimes across the United States, even to establishing elected boards of admission, sentencing, and release above and beyond the courts and parole boards.

S. 3185, the Federal Corrections Reorganization Act would set up just such a board, The District Court Disposition Board would have the same latitude that judges now have to consider extenuating circumstances. Unequal sentencing is among the first orders of business in any prison reform. One of the main aims of the Board would be to end the wide divergence of sentencing now found in the United States.

The 90 District Court Disposition Boards (one serving under each U.S. District Court), would have a wide range of responsibility from recommending bail to deciding whether a person should be imprisoned, placed in a job training program or put on probation.

If an individual is placed on probation, the probation officer would be directly answerable to the District Board. The District Board would assume all functions currently held by the Federal Board of Parole.

The five member Boards would also be responsible for guiding the progress of the convicted prisoner through the prison system, and subsequently recommend parole, when they feel the prisoner is ready to cope with society.

The current U.S. Parole Board, an arm of the Justice Department, consists of eight men appointed by the President to serve staggered six-year terms. The board consists of lawyers, criminologists, a sociologist and a former Secret Service agent. All eight members vote on only 1% of all parole decisions, usually the highly publicized cases.

In most cases, a hearing examiner will journey to a federal prison and interview an inmate for 10 or 15 minutes. Once back in Washington, the examiner will submit his report to a member who will confer with one other member, and the two will then decide the case. If they disagree, a third Parole Board member is called in to cast a deciding vote. If board members think enough information is at hand, the prisoner isn't even interviewed.

To a prisoner, the Parole Board member holds tremendous power—the keys to freedom. In speaking with Mr. Homer Benson, a social worker and former Parole Board member, he recalls that when he visited prisons "men and women prisoners would often call me 'judge' and 'your honor' and sometimes they would weep and plead for mercy."

Mr. Benson feels the biggest problem with the current practices of the Parole Board is the lack of personal contact with the individual whose future they're deciding. In essence the Board decides the fate of individuals whom they have never met.

"This to me, indicates a victory for computers over the individual—a terrific lack of sensitivity and a chance for the most dominant member of the Board to sway the group to his liking," stated Benson.

"It would seem ideal that an autonomous board be set up where members would meet as a group after individual interviews with inmates and then vote in their separate chambers on the individuals," continued Benson. "This way you would hopefully escape the politicking that is rampant on the current Parole Board."

Thus, our bill deals with consistency—an all-out effort to breathe consistency into the areas of probation, sentencing, and subsequently parole for the incarcerated of this country.

For example, in Washington, D.C., if a person is picked up for possession of marijuana for the first time, his or her maximum sentence would be one year, and more often than not would be a sentence of one year on probation.

Robert Apablaza, a housepainter, was arrested in New Orleans four years ago for possession of a matchbox full of marijuana. He was sentenced to 50 years for selling and possession of the drug—with no provision for parole in his sentence.

This uneven justice lands hardest of all on the black and minority poor. Blacks and Mexican-Americans alone now make up more than 50 percent of the inmate population of some of the nation's prisons. As many as 85 percent of the inmates in some prisons in large urban states are black. The ratios run far in excess of black and Chicano percentages of the total population.

Most prisons are filled with the indigent, their walls holding men and women without money or influence. Many committed a crime for that very reason and went to court with inadequate defense or no defense at all.

Over six million adults are arrested every year in the United States for nontraffic offenses.

More than 3 million of these arrests are for what George Beto, director of the Texas Department of Corrections calls, "sins instead of crimes." Among these victimless crimes are: drunkenness (which accounts for one out of every three non-traffic arrests every year), drug addiction, gambling, disorderly conduct, vagrancy, and juvenile delinquency.

In Washington, D.C. a sextex called the "Washington Six," a half dozen drunks, have accumulated 1,409 arrests among themselves for public drunkenness, and collectively have spent 125 years in the city's jails and prisons.

Several states are mulling the decriminalizing of their laws. At least one, Massachusetts, has acted. Governor Francis W. Sargent in November signed a law making public drunkenness without an accompanying felony a medical matter rather than a criminal offense. Dr. Nat Winston, a well-known psychiatrist with considerable experience in this area, will testify further on this matter.

One of the main areas of concern to me has always been the lack of separating the first offender from the seasoned criminal. Too often, young prisoners and first offenders are thrown in with hardened criminals to be attacked, molested and taught more sophisticated methods of crime.

We have got to find a uniform system for prison assignment and in so doing, call a halt to the ever increasing problem of recidivism. S.3185 deals with just such reform.

More than two-thirds of all prisoners return to institutions after committing new crimes soon after their release. This prison revolving door is clearly the writing on the wall for a total reformation of our current "corrections debacle."

Another serious failing of our prison system is the tremendous amount of idle time for the inmate. Only 25% of the federal prison population is engaged in work, leaving dissipated manpower sitting idly in phenomenal numbers daily, monthly, yearly.

At the insistence of private business and labor unions, prisons don't produce goods that will compete with private industry. Thus, those who are employed in prison industry are not learning marketable skills—skills that will afford them gainful employment in their community upon release. And those employed, earn between 19 to 47 cents a day—hardly enough to take care of personal needs on the inside, let alone support a family.

Prison libraries are painfully quiet due to the fact that prisoners seldom enter because of an obvious lack of resources. Sporadic donations are made of older, outdated material, but rarely is a prison library stocked with educational, updated, relevant material.

So, the men sit, they pace, they lie on their cots, some have paper and pencil and can write letters. I guess what I'm trying to say is that we have incarcerated this enormous group of people (on an average day close to one million men, women, and children), and instead of engaging them in rehabilitative programs we are simply re-educating them in more sophisticated methods of crime. In the words of Norman Carlson, Director of the U.S. Bureau of Prisons, "Anyone not a criminal, will be when he gets out of jail."

S.3185 would set up an Advisory Council to recommend standards for State institutions, serve as a clearinghouse for information, conduct seminars to evaluate new ideas and submit annual reports to the Congress, the Executive, and the Courts, advising appropriate steps each could take to improve our system of criminal justice.

Certainly included would be suggested improvements in educational programs, job training and counseling, general living conditions, recreation, and any other programs designed to prepare inmates to cope with the rules of society.

And certainly one of the basic ingredients to improving our current corrections systems is a positive program for the "youth offender."

I'm proud to say that in Tennessee, our Youth Corrections Department is manfully trying to meet this challenge. Our Youth Development Center in Somerville, Tennessee, is a paragon of "prescriptive programming"—where programs are fashioned around the interests of the individual. There are no fences, no bars, no guards dressed in grays carrying pistols or billy clubs—the atmosphere is one of congenial concern and purposeful learning.

Two weeks ago I visited the facility and met with their principle, Mr. Seth Garrington. I was particularly impresed with the many special education courses available to the youth, the spacious library and large gymnasium decked with swimming pool—not because young offenders should be coddled, but because they, to a large degree, can be taught a better and more responsible way of participating in this society.

On weekends the youth are permitted to return home, or, if that is inadvisable, they are placed in foster homes in order that they may get a feel for returning to society. There is no definite time the youth must remain at the Center after sentencing from the Juvenile Court. If he is ready within a few weeks, he is immediately sent home, if not for six months, then he is assigned a counselor who works with the child and helps determine when he should be released.

Ongoing now are several experimental programs that have proved highly successful. Functioning under the Office of Economic Opportunity, Project NewGate is a federally funded, university-sponsored program of post-secondary *education* and counseling in correctional institutions. NewGate incorporates three basic principles into one operational framework—pre-release counseling, intensive technical or educational preparation before release, and a post-release program of counseling, guidance, and therapeutic support.

At present the NewGate project is operating in six states: Colorado, Kentucky, Minnesota, New Mexico, Oregon and Pennsylvania.

The Seven Step Foundation operating at the Nashville Penitentiary, implements psychological goals in their successful self-help program.

Here men take the "Seven Steps to Freedom" pledge:

1. Facing the truth about ourselves and the world around us, we decided we needed to change.

2. Realizing that there is a power from which we can gain strength, we decided to use that power.

3. Evaluating ourselves by taking an honest self-appraisal, we examined both our strengths and our weaknesses.

4. Endeavoring to help ourselves overcome our weaknesses, we enlisted the aid of that power to help us concentrate on our strengths.

5. Deciding that our FREEDOM is worth more than our resentments, we are using that power to help free us from those resentments.

6. Observing that daily progress is necessary, we set an attainable goal towards which we can work each day.

7. Maintaining our own FREEDOM, we pledge ourselves to help others as we have been helped.

This special parole program is designed to help integrate the inmate back into the community.

Businessmen and other volunteers attend weekly meetings and deal with men on a one to one basis in counseling, offering job training and befriending the individual.

This promising program is just one of many successful approaches to bridging that gap from prison to stable community transition.

Under the basic assumption that "*probation*" is as effective, if not more effective, than most institutional forms of care, the California Department of Corrections set up its Special Probation Supervision Subsidy Program. This innovative program encourages county probation departments to reduce their rate (not numbers) of commitments to State correctional agencies in return for a financial reward to the county, that is commensurate with the degree of reduction they achieve.

This program is directly an experiment in institutional change. It is an attempt to apply learning and behavior improvement to a 68-year-old social institution—probation.

In the area of *employment*, the Manhatten Court Employment Project offers the offender an alternative to prison by giving less dangerous offenders a three-month grace period where they engage in extensive job-training and counseling. This program has proved to be a successful alternative to incarceration.

South Forty is a unique in-prison, out-of-prison experiment in rehabilitation. Utilized by the Green Haven Correctional Facility near Beacon, N.Y., South Forty is an uncultivated strip of land utilized by volunteers and ex-inmates to serve as a buffer for the prisoner returning to society.

Men are encouraged to get involved in *skill training* and in various programs geared toward building better self images while at the institution.

When the prisoner is released, he is promised job-training in one of South Forty's workshops at $50 a week for five weeks—during which time he is encouraged to find permanent employment in the community.

The program was just begun this year, and while far too soon for final conclusions, its rate of recidivists was 7.2% compared to a national average of 66%. It is a new progam and needs time to operate for an accurate measure of its success—but the basic ingredients are there and seem highly workable.

Programs such as I've described above—provide some semblance of hope for the totally inadequate system that we're currently dealing with.

I strongly feel that programs such as these, that prove successful over a number of years could under our legislation be recommended for uniform standardization in our Federal, State and local institutions.

It is my sincere hope that this Committee will give serious consideration to the alternative that we are presenting before you today, and that together as a nation, we too can treat the alienated in our society as they are treated in Japan. In the words of the Japanese Minister of Justice, Atsushi Nagashima, "In Japan we hate crime, but not criminals. They are part of our family and they are treated as such."

Certainly a tremendous number will continue to pose as a threat to their fellow man and they must be removed from daily contact. Yet, a great many of these

individuals can be taught a better way of respect for their fellow man and for themselves.

Can we truly ignore the increasing cost—to us—of our failure to respond to this tragic condition? I do not believe we can, and I urge your support of this first small step.

Senator BURDICK. And we appreciate the summary, as you know.

Senator BROCK. I am aware of that.

You know, I think, Mr. Chairman, that the continuing tragedy of crime is something that is so desperately in need of our attention that we continue to talk about trying to stop crime on the street without paying attention to the crime that is being continued or taught or perpetuated in our penal and judicial systems.

We spend a billion and a half dollars on a criminal justice system and the cost of crime is over 30 times this much, over $50 billion, countless lives and endless misery to this Nation from the crime which this system fails to correct.

Too often prisoners are caught in a nonstop revolving door of crime, punishment and more crime.

Where over 8,000 men, women, and children are subjected daily (most for the first time) to our penal system, and two-thirds are expected to return, there is something obviously lacking.

Sordid conditions prevail in many of our county and city jails, with rats so bad that food has to be tied to cell ceilings, a lack of basic educational programs, and meaningless skill training being taught.

Today I am here to support the Federal Corrections Reorganization Act. And it is my hope that with this vital legislation, we as a nation may encourage men, women, and children to become responsible members of our society. S. 3185 would set up two exclusive boards, the Federal District Offender Board and the Federal Circuit Offender Board, which would recommend to the courts action for persons arrested.

The Federal District Offender Board would serve as a personal agent to follow the prisoner from arrest, through imprisonment and subsequently to parole. The five-member Board would assume all responsibilities now held by the U.S. Parole Board, from interviewing persons for parole to appointing probation officers.

Our bill also calls for an Advisory Council that would recommend standards for State institutions, serve as a clearinghouse for information, conduct seminars to evaluate new ideas and submit annual reports to the Congress, the Executive, and the courts, advising appropriate steps each could take to improve our penal system.

It is my sincere hope that this committee will give serious consideration to the alternative that we are presenting before you today, and that together as a nation, we, too, can treat the alienated in our society as they are treated in Japan. In the words of the Japanese Ministry of Justice, Atsushi Negashima, "In Japan we hate crime, but not criminals. They are part of our family and they are treated as such."

Certainly a tremendous number will continue to pose a threat to their fellow man and they must be removed from daily contact. Yet, a great many of these individuals can be taught a better way, a way of respect for their fellow man and for themselves.

Can we truly ignore the increasing cost—to us—of our failure to respond to this tragic condition? I do not believe we can, and I urge your support of this first small step.

Now, with that, Mr. Chairman, I would be delighted to respond to questions, or to proceed to introduce the other members of the Panel today, as you see fit.

Senator BURDICK. I just have a comment to make.

First of all, I want to thank you for your support and your contribution this morning. The problem we face has only been recognized by most people in recent years: I would say just in the last 5 years that we have realized that we are faced with this deadly cycle of recidivism. As you have stated yourself, two-thirds of those arrested will be back again, time and time again, so what we are doing is not right. We have to take new approaches and new channels, and that is what this committee has been exploring for the last 2 years.

I think we have made some progress and it is information that you bring to us that is very helpful and I will be pleased to hear your friends here this morning.

Senator BROCK. Well, first let me present Johnny Cash. Johnny is no stranger to prisons or prisoners from either point of view, inside and out. He made his first major appearance at San Quentin in 1959, returning in 1960 and 1961. In 1969, when he sang for the first time, the classic rhyme, "San Quentin You've Been Living Hell to Me," and on the lighter side, the famous song now, "A Boy Named Sue," it was merely a sequel to his performances at the State prison in Huntsville, Texas, and two visits to Folsom.

In 1958, when he was at Folsom, he met and held out his hand to a man who had been serving time for over 10 years, a fine songwriter and performer who is with us here today, Mr. Glen Sherley. Following these appearances, John has subsequently performed, with his group, at Cummings State Prison in Arkansas, New Mexico State Prison, Leavenworth, Lansing for Men and Lansing State Prison for Women, and just last month at Western Federal in Pittsburgh.

He is also scheduled to do a show at the prison in Stockholm in September. All of these he has done voluntarily. On the involuntary side of the ledger, John has also seen the inside of a few jails. Between 1960 and 1967 he was inside of the Nashville City Jail, Carson City Jail, Starkville, Miss.; El Paso, Lafayette, Ga.

When having a doctor of humanities degree conferred on him last year, Dr. Tom Poston of Garden-Webb College, said:

> In conferring this degree, we recognize a man of the soil, who has worked so diligently in behalf of the poor and downtrodden—for those who are forgotten behind bars.

Dr. Johnny Cash has not forgotten these men. He goes there to help and he is here to help today.

And there is one other person that he has brought with him that I think he probably would want to introduce more fully, but we also have here Harlan Sanders, who like Glen Sherley, has had a considerable amount of experience behind bars and who is most recently out some 6 days now, I think.

So, Johnny, if you will proceed.

STATEMENT OF JOHNNY CASH, HENDERSONVILLE, TENN., ACCOMPANIED BY GLEN SHERLEY, EX-CONVICT; AND HARLAN SANDERS, EX-CONVICT

Mr. CASH. Thank you, Senator Brock. Mr. Chairman, it is a pleasure to be with you this morning.

I would like to read a paragraph from a newspaper editorial and, for the most part, this is my personal statement. I would like to say a few other things after that:

> When a man is sentenced for a crime he must feel a loss for transgressing the laws of society, but generally the system not only punishes men, it degrades them and, in many cases, that is all it cares to do. It is indifferent whether it sends the man out better or worse. As a consequence, our prisons are full of revolvers, men and women who are sentenced for short terms, then discharged to commit their old crimes or worse crimes. In many cases, the prison is an incubator for crime, a Crime school, crime being well-taught and well learned in the prison sub-culture under the unseen and at times the seeing eyes of the authorities. The true idea of prison is not only to punish, but to reform, to make convicts afterwards the better fitted for society. To effect this there must be an element of hope mingled in the treatment of moral discipline. Should not more philosophers and humaniarians be involved in the prison corrections systems.

The dateline of that paragraph from that newspaper, Mr. Chairman, is December 1865. It is only recently that we have generally become aware of the great amount of recidivism in our prison system but it was a thing that did exist back then, as you see from the New York Times.

I have been in the entertainment business now for 16 years and shortly after I began, I performed my first concert at a prison at the request of the inmates at Huntsville, Tex., State Prison. I went from there to Folsom, to San Quentin, to Arkansas State Prison, and I met many fine men, inmates, and the personnel who run the prisons in all of these places. And I found over a period of 17 years, I believe that possibly 25 percent of the men behind the bars really need to be in a prison.

I think that with the program to cover the man from the time he is arrested all the way through his trial, conviction, his prison sentence and his parole, that there will me many less men actually admitted to prison to serve prison terms, to become a part of this outturn, of this incubator for crime in the systems.

I have seen and heard of things at some of the concerts that would chill the blood of the average citizen, but I think possibly the blood of the average citizen needs to be chilled in order for public apathy and conviction to come about because right now we have 1972 problems and 1872 jails. And like Governor Bumpers of Arkansas recently said, unless the public becomes aware and wants to, and wants to help and becomes involved in prison reform and really cares, unless people begin to care, all of the money in the world will not help. Money cannot do the job. People have got to care in order for prison reform to come about.

At a southern prison where I performed, the day before I arrived there, I was told by prison officials a 15-year-old boy was in prison for car theft and was raped continually all night long by his fellow inmates, and he died the next morning; 15 years old and his bunk—these bunks are all jammed up together in this prison and the young man, the first time living with three-time losers and sadistic killers, died.

In another prison——

Senator BURDICK. Where was this first episode?

Mr. CASH. In Arkansas.

In another prison, a teenager was imprisoned and his clothes were taken away from him to shame him for his crime and he hanged himself. This was in Virginia.

I think that there is one shortcut, a major shortcut, to prison reform that should be applied in conjunction with these, all of these measures that are being discussed here by Senator Brock. I think they are most important because we have to be practical in prison reform, and the purpose behind prison reform should also be that there should be less crime on the streets: that our streets, that our cities should be a safe place for a wife and children to walk down. But, in order for this to come about, the men in prison have to be treated as human beings. If they are not, when they are turned out on the streets, they are not going to act like human beings.

Another big thing that would help with these bills that the Senator is working on here, is a great spiritual revival. I think the emphasis in a lot of these prisons needs to be on more religion, and the kind of religion that the man wants to hear about, ministers, rabbis, preachers that really care for these men, that are really concerned with them and not just somebody who comes here because he is paid $200 a week to do it.

I would like to introduce to you—and let you hear from them—two men. These two men are as different as daylight and dark, but they are both ex-convicts. One man has been out of prison 6 days. He served a fairly short term. One man has been out for about 16 months and I think he was in for about a total of 15 years. Mr. Harlan Sanders and Mr. Glen Sherley.

Thank you, sir.

Senator BURDICK. Well, I will hear from Mr. Sherley and Mr. Sanders, and when they conclude, we will have some questions for the whole panel and we will proceed from there.

Which one of you gentlemen wishes to proceed first? Mr. Sherley?

Mr. SHERLEY. Mr. Chairman, well, I think that the bill that Senator Brock is trying to get through is—could be one of the changing factors, because once you reach prison and you become involved in that subculture, that society, and become a cog in that wheel, then to get out of it it takes an awful lot more than it does if you can be deferred before you get there, if you can be stopped some way, if you do not have to start. Because once you become a cog in that wheel, and the people working there they play a part, and I played a part as a convict in there. And then it becomes a much tougher job. You have really got—you are fighting an uphill battle because to change that society where your life is only worth a pack of cigarettes, and where people do—kids do get raped by another man and he has decided that his only life is prison so he does not care anything about himself. He does not care anything about you when you get there and if you reach prison as a youngster, 18, 20, and you do care, if you do not have or do not get an I-don't-give-a-damn attitude, then you are in trouble, because these people are going to take advantage of you, and they are going to molest you, they are going to take anything that you might have, pride or anything of monetary value. It becomes theirs. And to change in that society is very difficult.

And the only way to stop all of the repeaters is to not let them become a first to become a repeater. And this can be done with this bill. If it can be channeled into the community, if the people in a community will become involved and concerned with the problem, and realize that it is a problem before the man gets there, then very possibly he will not commit another crime. If he has people that he feels care enough about him to come to court and to take an interest in him and give him some responsibility that he can meet and a goal that he can reach, because I have seen men stabbed over a pack of cigarettes, killed over an insult or an imagined insult, and this is not a society for a man to become a useful citizen outside. And criminals are not born, they are made. I do not think any man would rather be recognized for bad than good.

But, if the only way of getting attention as a youngster is being bad, then it becomes a way of life and the only way it can be changed is to recognize the good points in a man and praise them rather than recognize the bad and praise that. I do not believe that you can ever stop the repeaters as long as you are putting them there first. I believe it will continue to grow because it becomes a way of life. Once a man loses his fear of prison, has been subjected to it, and survived the first hitch, then it becomes a way of life, and the sad part is that after that maybe he does not want to get changed and the people working there do not want it changed because it is a way of life for them also. They become as institutionalized as the men behind the bars. It is a way of life for them to go to work and spend 8 hours there, not caring what happens to the men around them, so that this 15-year-old boy was raped to death. They coudn't go home and it does not really bother them. They become hard. It is like an ambulance driver. He becomes used to the blood, and to the corruption, and to the guts that he has got to scrape up off the street. They become used to this as a way of life.

And I will say again, the only way to change it, is to stop it before it starts.

Thank you, Mr. Chairman.

Mr. Sanders?

Mr. Sanders. Mr. Chairman, I guess Glen and I might be different, but in this respect, the most important part of this bill to me is stopping them before they are going. You have got to stop them before they go.

Senator Burdick. Can you bring that mike a little closer?

Mr. Sanders. How's that?

Senator Burdick. Fine.

Mr. Sanders. I have got a lot of friends doing a lot of time in a lot of prisons and I love them to death. There are some good people out there that need to be saved but I see people here, I saw them coming in, you know, and you see one of these fellows with a flower in their hair, and they are going to come out wearing a miniskirt. It is humiliating. I have had people come at me with razor blades and had to break a guitar over one's head, and you show weakness—friendship is weakness sometimes, and I have had a hell of a lot of hassles with it, with a lot on the surface good guys. But, nothing is—that is dehumanizing, but nothing hurts as bad as those bulls. Let me tell you about some of those officers.

They are good people, you know. There is a hell of a lot of good people there. When you bend that rule, as long as it is bent their way,

they can laugh, they can joke and say, hey, how are you doing, Sandy; hey, man, what's happening? If you want to bend it this way, accidentally, because you learn to walk on tiptoe, if you want to bend it this way, then, man, your skin shows.

And after I began to get some of my pride back, after a man named Johnny Cash and Glen Sherley began to look at me and say, hey, you know, you are worthwhile, then about 6 months later I was thinking I was pretty worthwhile and I was all right. Nobody could give me a pill, nobody could give me anything, you know, and I did not want to talk about it, you know. I said, I have got friends and they are depending on me to be a friend.

I walked out of an Alcoholic Anonymous meeting. I had a chance where I could just go in and meet people, and people would smile and I walked out of there feeling good, like I am one of them, you know, and it would not be long before I am out there again, and the bull grabs me and he says, you over in the corner, take off your clothes, you know, and you know, the man gets hurt and it hurts and I grabbed him one time and I said, hold it, and let's talk about it and I got the officer down and we were able to sit down and talk. And I find that although I am changing, although other people in the joint are changing, they want to get a hold of themselves, the system is not; nothing changes. You have to go to change and do it all yourself. You have got to walk it and so sometimes it is pretty hard and when you send that youngster in there that don't know what he is up against, Mr. Chairman, it is going to kill him. If it does not kill him, then he is going to come out wearing a miniskirt or carrying a gun or he is going to have to go through a lot of gut-caring to find that he is worthwhile.

That is all I have got to say. I sure do hope that we get this bill.

Senator Burdick. Well, thank you, gentlemen, for your contribution. It has been very helpful to us.

Mr. Sherley, you said that once you are in prison you become a cog in the wheel and Mr. Sanders, you said that you have got to stop it before it starts. This thesis was developed last week also and one of the leading witnesses was the District Attorney Seymour from New York in support of a bill we call early diversion. This is a new concept and the theory is that if this early offender can be diverted into either educational work or put on probation before the wheels of the cars begin to grind, such as the court procedures, such as the plea of guilty, not guilty, the trial, and so forth. But, if something can be done to rehabilitate that man before the doors of the prison clang behind him, that we have a better chance for rehabilitation than after the doors are shut. Do you agree with that?

Mr. Sherley. Definitely.

Mr. Sanders. I surely do.

Senator Burdick. Now, that is called early diversion. Now, it is going to be in the discretion of the prosecuting attorney and the judge as to whether or not this particular candidate, this particular offender, fits the mold for early diversion.

We also find that this would also help the offender in another way. We have some of our statutes in the States, various States, that preclude a man from getting a living. They say in some States that he must have a license for barbering, for example, and a criminal record will stop that. So, if we can divert this man, put him on the right track

before he gets that record, before he gets into the atmosphere that you have described so vividly this morning, we have a chance to reduce his recidivism rate.

Mr. SHERLEY. That is true.

Senator BURDICK. Have we got the right line here?

Mr. SHERLEY. That is right.

Senator BURDICK. What else can we do?

Mr. SHERLEY. First, you have got to convince the district attorney all over the world that that conviction is not as important as that man's life, so that he can become a judge. You have got to convince him of that first so that he can be more concerned over whether this man, how guilty he is, this man what is the crime. That is not important. That man's life is more important than him becoming a judge, because he had x amount of convictions against x amount of losses. And this is going to be hard to do also.

Senator BROCK. Mr. Chairman, if I can add one point, this particular bill 3185, creates these District Disposition Boards and that is a third party really. You have got normally the judge and the prosecutor, but a prosecutor, just by the very nature of his job, is going to be somewhat cynical and somewhat difficult to convince, by and large. And I think the intervention of the third party, which investigates the whole background of the individual and the case itself, can be a balance factor on behalf of good justice that would be extremely beneficial. I do not really think we can stay with and leave the determination to just the judge and the prosecutor and the defendant's lawyer.

Senator BURDICK. We are talking here about the theory and concept, and how we get the diversion into operation if we can. If we can figure how, first of all, we have to accept the theory, we have to have the American people accept the theory that the man commits the offense, and he does not necessarily have to go to jail, that he might be diverted into an educational program, a vocational program and stopped, as you say, Mr. Sanders, before it starts. Now, the mechanics, the third party you mention, is probably excellent and we are just trying to develop a new approach because the old approaches apparently are not working, not only are they not saving people but they are costing the taxpayers of this country an awful lot of money.

Now, Mr. Cash, based on your experience, what else can we do?

Mr. CASH. I would encourage the passing of this bill that will put some consistency in the laws of this land concerning first offenders, and, in particular, for instance, such as possession of marihuana. As the system is now, when an 18-year-old is put into prison for possession of marihuana, you have made a criminal out of him, as Glen said, and in 5 years he comes out an educated, well-trained criminal in the ways and in the skills of crime. And I think that is a crime in itself to do that to a man.

We are into something else entirely really when you are talking about the laws on marihuana, but it is a good instance. I would urge the passing of this bill that would put some consistency in the law throughout the land on things such as marihuana, because there are many, many young innocent inquiring lives that are destroyed because of it. It is in the fire and in the blood of youth today to try things and I know, practically every kid I know and I know a lot of kids, and have got a lot of young friends around where I live, and I guess prob-

ably every one of them at the age of 18 has tried marihuana. This is unnecessary.

I realize that many new buildings, a lot of money and many billions would have to be appropriated to build new buildings, to house these people, and to separate them. But, I would urge the separation of the young men from the old ones, and at all times when it is possible to separate the first offenders from the others.

I believe that is all I have right now.

Thank you, Mr. Chairman.

Senator BURDICK. I think you gentlemen will recognize there are certain assaultive types that have to be incarcerated for the sake of the community. We are dealing with a large number of people, first offenders and young offenders which I think can be diverted, can be rehabilitated, and when incarceration is necessary, I fully agree that the first offender and young offender should be separated. A lot of our prison officials come back and say, we do not have the money, and the legislatures do not give us the money, but I think that is a must. I think it is absolutely inhuman to place the young man in with a hardened man, and you just graphically described what happens sometimes.

No, I think the staff has one or two questions.

Senator BROCK. May I just add one point to that, Senator, because I think it is important.

Senator BURDICK. Yes.

Senator BROCK. I spent Saturday afternoon at the State penitentiary in Nashville, and I talked to a group of inmates, just 20 or 30 in the same room, and me, and nobody else, and talked about these rehabilitation programs and the first offender programs and things like that. And one of them said something that was important to me. He said we believe in what you are trying to do on the first offenders, and we fully support it, but do not put all of your fire on the first offender program, because there are other things that can help, too. They described at considerable length, and I have included in my testimony a very brief summary of something they call the Seventh Step Foundation. Now, frankly, I had not heard of the program in any detail until I talked to these men, but, boy, they have done a job of selling me on a prisoners-helping-prisoners-inside program and it really got exciting to listen to. I am not sure that the Federal Government should tamper with it because we would foul it up. But I do think that kind of thing needs to be encouraged too in any possible way we can, because these are men relating to men in similar circumstances and who know each other's problems and can more easily relate. And I think there is a real possibility for improvement beyond just the first offender and I hope our legislation will not simply limit itself to the presentencing and first offender areas, because I think we can do an awful lot of good elsewhere.

Mr. CASH. Mr. Chairman, could I say one other thing?

Senator BURDICK. Yes.

Mr. CASH. I agree with you that there are men who must be incarcerated. I want them to keep my family safe and your family safe and keep the streets safe but, you know, I think that progress even with those men, it comes down to even no matter how tough and hard they are, it comes down to the fact that we have got to care to have any progress with them. I recently performed at West Pennsylvania State

Prison, last month it was, and I took my entire concert in there. And as these men came in, some thousand of them, there was a group of them right down front center, the pushy, violent ones, that came down in front and folded their arms, just like this. And as I came on stage, they said, "OK, show me something". And they had on sunglasses and a beard which was their mask, to mask out anybody trying to get through to them.

So, I started performing, and as I got about half-way into my concert, I remembered that I had performed at Folsom Prison and I took my 75-year-old father with me. So I said, I am going to dedicate a song to my Daddy, and I said, my Daddy was good to me most of the time. Usually he was the greatest Daddy in the world. And I said, any of you guys got a Daddy like that? And, you know, they started pushing each other, yeah, my old man, you know, and I could see them talking.

Well, after about two-thirds of the way through the concert, I think about two-thirds of them dropped their arms, and when I saw I was getting through to them, I said, I performed last night in Chicago, and tonight in downtown Pittsburgh, and tomorrow afternoon in Dallas. And they do not pay very good at West Pennsylvania State, you know, and I got to be here because I care, right? Because we would not allow the press into that concert and they said, you know, they started nodding and so I felt that by the end of that concert, when they saw that I really did care, that all of us cared in my concert, and most all of them but about two of them had dropped their arms, and were tapping their toes, or smiling along with us. And if we could have come in with some good program and hit them with it right then, and started working on them, you know, with the atttiude of good spirit, and a caring spirit, I believe a lot of good could be done.

Senator BURDICK. We need more Johnny Cashes, I guess.

Mr. CASH. Well, thank you. I was just trying to point out the fact that if you let men know you care for them, you can do something with them.

Senator BURDICK. Senator Cook, do you have a question?

Senator COOK. I apologize for being late, Mr. Cash, and Senator Brock and Jim. I have been in a meeting on methadone so we can kind of catch up. I want to elaborate on what Senator Brock said, because I think as far as the young offender, Mr. Cash, is concerned, we have got to establish some open campus institutions in the United States. And relative to the remarks that you said about the prison Saturday, we have an institution in Kentucky that is called South Field and it is a peer group operation. And they sit and talk with each other, and let me tell you when you get five or six young offenders that sit down and talk to each other and then some guy gives a big story and con about how he out there, and all of a sudden four or five of them sitting in the group start tearing in at him and they say, don't give us that balony and, you know, one of the real serious problems we had at that institution is that they will run it. They not only run it, but they run the punishment within it, and we had to get over some real traumatic experiences because of the punishment they meted out their own being a lot tougher than the institution would ordinarily mete out to them. But, the recidivism in that institution is down to almost nothing, because they handle their own problems, and they eval-

uate their own problems, and they come up with the answers. And what you are saying and also, Senator, when you say, maybe the Federal Government had better not fool with it because we had Mr. Hoffa who proceeded to tell us when he tried to get additional books into the library or some other things into the facility, or tried to help somebody, he was told by the Federal prison officials that he could not do it, and it was not allowed. So, I guess you are right. If we got into it we would probably foul it up real good.

Senator BROCK. Well, I am not saying there aren't a lot of areas that we should get into. There are. But, what I am saying is when you've got a con-to-con program where guys are sitting there and the whole idea behind this Seventh Step program is to have a guy face the truth about himself. It was not society that pulled that gun, it was him. Now, he has got to admit that before he is ever going to be able to rehabilitate himself, and their idea is to remotivate, not rehabilitate. They say you can give us all of the rehabilitation in the world, with all of your Federal and LEAA programs and all of the rest, but unless we are motivated it doesn't mean anything.

Senator COOK. You know, we are talking about comunication in this country, and the unfortunate part of it is there is very little communication in the Federal prison system, because you are told to be quiet all of the time and stand in line, and march around.

Mr. SHERLEY. You cannot have communication when you are told to shut up every time you open your mouth.

Senator COOK. That is right. Thank you, Mr. Chairman.

Senator BURDICK. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

I approched this hearing and the consideration of this bill with considerable sympathy, because S. 3185 is a component part of the overall reform of the criminal justice bill which I have cosponsored and I feel very deeply about the purposes of it. I do have several questions, one or two for Senator Brock because before I came to the House of Representatives and to the Senate, he had a business experience, and I think we would all recognize that the ultimate test of success of a criminal or a rehabilitation program is going to be how he is accepted by the business community, and the jobs that are made available, and the acceptance of the graduates of these programs going back to normal life. So, I would say to Senator Brock that as a businessman how do you feel about the present fragmented Federal criminal justice system as compared with the integrated, orchestrated, or coordinated bridge which I would feel that the bill we have cosponsored envisions?

Senator BROCK. You know, I can approach that from almost any number of answers, but I remember a little company that went broke in New Orleans and they were two of the finest men I ever knew in my life and they worked 12 hours a day to keep that company on its feet. They sold the product, and on their books they had a profit and they paid income taxes every year and they went broke making a profit. And they could not understand it until somebody went in there, an accountant and said, where is your depreciation figure and they said, what is depreciation, and he said, depreciation is how you age your equipment so that you can set aside enough money to buy new equipment. Well, they had never heard of that and I think that is the way we are running our penal system in America today.

It is insane to say we are spending a billion and a half dollars on penal justice, and then we are spending $50 billion a year on crime. I mean, the thing is way out of whack. If the penal system today is contributing to the crime problem of America, and nobody denies that it is, then we are absolutely penny wise and pound foolish not to do something about solving the problem and putting our money where our mouth is and doing something to reduce crime on the streets. That means you have got to do something about diversion, it means you have got to do something about uniform sentencing. It means you have got to do something about equity and parole opportunity. It means you have got to do something about motivation and rehabilitation. All of these things work together and it is terribly inefficient, not only immoral, but inefficient in dollars and cents terms for us to subject our wives and children to a system which continues to expand the cause of crime instead of reduce it.

Senator MATHIAS. Aside from the humane aspects and the moral aspects, it is just hard dollars and cents, commonsense to do so.

Senator BROCK. I do not think we can afford not to do something. That is the size of it.

Senator MATHIAS. Now, to make sure we are on the same ground, because I am concerned as Mr. Cash has expressed himself earlier, about the state of first offenders. How do you envision this bill will affect the assignment of first offenders?

Senator BROCK. Well, in the first place we allow for diversion; we allow for a preconference, precharge conference between the district board, the judge, the lawyer and the prosecutor, so that all of the elements in this particular individual's case can be taken into account. There is a great deal of difference between somebody who goes out and breaks into a whiskey store just for the sheer hell-raising fun of it, or just to destroy and somebody whose kid is suffering from appendicitis and he has not got the money to make the operation, you know. There are all kinds of things that should be considered in whether or not an individual can be rehabilitated. There is no way today that we can judge that with the present system. He goes in court, he goes to trial, he goes before a jury, he is sentenced and put in jail for 5 years without any real consistency of sentencing, without any regard as to what opportunity he has to be a contributing member, a responsible member of society. And there just must be a better way of doing it. So, what we do, we allow the precharge conference to divert those people that can be salvaged and to make sure that those who cannot are isolated from society, because society does need that protection, too.

Mr. SHERLEY. And isolated from the ones that cannot be helped.

Senator BROCK. That is right.

Senator MATHIAS. Now, two further brief questions. I think you and I both share the feeling that the role of the States in giving some local control is still an important part of our system.

Senator BROCK. Right.

Senator MATHIAS. Do you have any concern that the recommendations of the advisory council regarding State standards as a condition for receiving Federal money would tip the scales too far in the direction of Federal control?

Senator BROCK. No, I do not. Well, now, let me say this. I think Glen will tell you that the worst jails in the whole world are the city

jails and next is the county jail, and the next is the State and then the Federal. Boy, ours is awful. So, I do not know but what the Federal system should be a model for everybody and we should make it the best possible. Now, that is our obligation right here but I think we have also got an obligation if we are going to fund State programs to have them meet minimum standards. We are not saying you have got to have this kind of a rehabilitation program, but we do have the right to say, I think, if taxpayers' money is going to be spent that you have got to have a rehabilitation program. So, I think——

Senator MATHIAS. With a certain minimum degree of success.

Senator BROCK. Of course. And in Tennessee, just a week before this, I went out to a school, not a reformatory, it is a school for first offender juveniles and, by golly, it is just a refreshing thing. It is beautiful. There are no walls or fences. It looks like a school and yet the kids are there, and they are going to stay there as long as that parole man says you are there and you are not corrected, or you are not ready for society. But, the minute he decides that those kids, or that particular kid is ready to rejoin society and will be a contributing member, he is out. During that time, he does not have bars, he does not have wardens, he does not have guards. He has got teachers and these kids have a chance for a change. It is working and it is a thing of beauty. This legislation would encourage that kind of thing, it would not discourage it.

Senator MATHIAS. I would agree. We have had some experience in Maryland with the seven steps and I have visited the program and it is impressive really.

Senator BROCK. It works, it really yorks. We have only had one repeat out of the seven-step program in the last year in Tennessee. That is quite a change.

Senator MATHIAS. Senator Cook just commented here that the real test of success of these programs is the rate of recidivism.

Senator COOK. That is it; that is right.

Senator BROCK. Our State system is now from 66 to 40 percent. We are making progress.

Senator MATHIAS. One final question to Senator Brock on the same vein. Do you think that the District Court Disposition Board would usurp the traditional functions of the court, and the judicial function?

Senator BROCK. No, not at all. I think it is an asset to the court. It would serve as an additional arm of the court to do pretrial investigation, to advise on sentencing and to achieve uniformity. But, in no way, does it interfere with the legal function of the court to make an adjudication. That is the court's function but this is an additional tool for the court to use to make the court apply the law with justice, because that is not always the case. And what we are trying to do is to make the law work for the common good of the people of this country, and blind law does not necessarily do that. This is law with its eyes opened, with all of the facts.

Senator MATHIAS. Mr. Chairman, just a couple of questions to Mr. Cash.

I was very much interested in the picture you painted for us a minute ago of the convicts sitting with arms folded, and resisting any human contact. I suspect that as you saw them, they may see a great many prison officials, and the men in charge of parole and probation

who to their eyes are sitting with arms folded and who seem detached and unconcerned, so it is impossible to cerate communication.

On the other hand, viewing the problems of these men, we have eight members of the Federal Parole Board, and eight hearing examiners and together they make some 17,500 decisions a year. But, since two members have to concur in each decision, that means there are really 35,000 decisions that have to be made, and so that means each one has to make about 2,500 decisions a year, which allows about 2 minutes per man in a normal working day. So, if you get some of this folded-arm detachment, perhaps the system that we are trying to work with now invites it.

Mr. CASH. Yes.

Senator MATHIAS. And prevents some of that communication.

Mr. CASH. Yes, sir.

Senator MATHIAS. And what I would like to ask Mr. Cash, because of the contact that he has had, and the contribution that he has made in this area, is whether you think that the present parole decision procedures do contribute to the frustration of prisoners?

Mr. CASH. Yes, sir, I am certain, I am sure they do because if a man is in for 10 years, he knows that when his time comes, he is going to be allocated approximately 2 minutes of consideration and they are going to listen to him for only 2 minutes to tell what kind of a man he is, and they may be spending the biggest part of those 2 minutes telling him what kind of a man they think he is.

The last sentence of my first statement today from this newspaper, which is, should there not be more philosophers, and humanitarians involved in the workings of this criminal system, I think these people in probation need a lot of help from the citizenry. I think for the people to become involved in this reform program, they are going to have to be and maybe they will have to be drafted like jurors to assist the parole board. They need attorneys, they need ministers, they need deacons of the church, rabbis, to assist parole men so that each inmate can know that he is going to get a fair shake when he comes up. That would be my recommendation, sir.

Senator MATHIAS. How about Mr. Sherley? Do you think the present parole procedures diminish or increase prison tensions?

Mr. SHERLEY. I am sorry, Senator. I did not understand the question.

Senator MATHIAS. How about Mr. Sherley? Do you think the present parole procedures diminish or increase prison tensions?

Mr. SHERLEY. They increase it. It is just like John said. If I go up there and I have had, as Senator Brock has said, a child who needed an operation, and I did not have the money to get it or my family is starving and I stole some money to feed them, I want more consideration than this guy that is robbing and stealing just for the hell of it. And with 2 minutes' time alloted me, I do not think they can give me the proper consideration. I think they are bunching me up with them and I am going to resent that. So, I am not going to open up to them, you know, like I am going to sit there with my arms folded because I think that is what they are doing with me. And we reach a lack of communication.

Senator MATHIAS. Well, if rehabilitation is the real goal, and certainly it is not only from the prisoners' point of view, but from the point of view of society, because these people are coming back to society——

Mr. SHERLEY. Excuse me. I think it should be pointed out that most people in there, their growth was aborted in childhood and so they are as children. I do not care how old or how tough they are, they are still as children, and they have never been—rehabilitate means to go back to a former state, and well, the only place they can revert to is a child, childhood, where they got sidetracked so they have not been rehabilitated to start with and it is like a question not of rehabilitating, but to habilitate them to start with.

Senator MATHIAS. To make a positive advance?

Mr. SHERLEY. Right. Show them some means of reaching a good goal instead of a bad goal.

Senator MATHIAS. You think it is the negative, the bad goal, that we are reaching today?

Mr. SHERLEY. I am sure, I am positive. I think the figures will prove it. But I think that money is, the moneys that are allocated for building, should be alloted for hiring people, psychologists, psychiatrists, people that know where they are because if a 21-year-old guard approaches me and I strike out at him, and he does not know where he is as a person, then how is he going to help me find out where I am, because he strikes out, too, because he does not know where he is, as a man. And I call him a bastard and he is going to write me up and put me in solitary confinement, and when I get out of solitary confinement, every time I see him, I am going to see red. There is no way in the world that he can reach me. And every time he sees me he gets angry because I put a question to him whether he is a bastard or not, and he does not really know.

Senator MATHIAS. But, in the meantime, you build a wall between you that you cannot get through?

Mr. SHERLEY. That is what we have done. We have built a wall and there is no chance of us communicating, him helping me because I do not feel that he is qualified.

Senator MATHIAS. In your judgment, Mr. Cash, on this, do you think if there were goals set at the time of sentencing which were tied to parole release, will this contribute to the prisoner's attitude, would it prevent this kind of wall being erected?

Mr. SHERLEY. Not as long as you have the 21-year-old enforcer who does not know where he is. He is the preventive. Of course, the convict is also because he is there, but he is there whether it is a 21-year-old guard that is going to try to lead him out, or whether it is a person who has been well-educated and trained in psychology. Every problem with a man is psychological. This is so intricate that it is hard to get down to you, you know, why you put on a certain shoe first in the morning. I mean, there is a reason for it psychologically. It is the same thing with men in prison.

Senator MATHIAS. Would you agree with that, Mr. Cash?

Mr. CASH. Yes. One thing that I see that I just love about this bill, Senator Brock is involved in here, that we talked about this morning is that to give a man some ambition, some motivation to try to be paroled early. I mean, this program covers the thing that if a man, whose record is good while he is in prison, if he shows progress, if he shows reform, in other words, walks the line, then give him the motivation to try to obtain an early release. I think this is a very important thing; to give a man some hope in prison, to give a man some encouragement

to be a better citizen while he is there and if he is a better citizen, while he is there, he is going to come out a better citizen.

Senator MATHIAS. Do you think that this would have some effect on the repeater?

Mr. CASH. Definitely it would.

Senator MATHIAS. Because it gives him a more positive experience in his first, and, hopefully, his only prison experience.

Mr. CASH. All of the things would cut down on repeaters but that one thing alone will cut down a lot of repeaters, to get a man inside to work for an early release, to be a productive citizen of the prison community which will be a productive citizen of our community.

Senator BROCK. I think it is awfully hard, if I can interject, for us to feel what Glen Sherley would feel or any other person who is on the inside what it is like, perhaps, like trying to feel black. It is very difficult for a white person to feel exactly the same kind of thing. There is a subculture in prison that is absolutely different from anything we have ever experienced or could experience. Glen was very much a part of it, ran it and I think unless there is some way of breaking that pattern you are never going to break the recidivism. If a guy is convicted and he says I am going to be here for 20 years, come hell or high water, and there is nothing that can happen to get me out any earlier, then the only thing I can do is make it work to my advantage. He accepts it and he says I am going to have to let it dictate my life style, and I am going to have to adjust my whole pattern of thinking and he starts delving into narcotics, he starts talking rape, things that are just out of the nomal cycle of our thought process.

Mr. SHERLEY. That is true. He becomes a wheeler and dealer to survive and be one of the top dogs in the prison, and he becomes a wheeler and a dealer in narcotics, homosexuality. He becomes aggressive and homosexual, and if he is going to have to be there 20 years, then he is going to make it his home, so he gets him, as the saying goes, an old lady and he sets up housekeeping and the whole smear, and to get him once he sets the shield, and has decided this is his life, then you have got to just bust him in the head with something to get his attention diverted, because everything is applied in this one direction and everything that he can manipulate to reach those ends, he will, as you would.

Mr. SANDERS. Senator Mathias.

Senator MATHIAS. Yes, Mr. Sanders.

Mr. SANDERS. I have a billfold here, not very dressy, but I have a friend of mine and he is in for kidnaping in California prison, and he has got 7 years to go to the board.

Senator MATHAIS. Seven years?

Mr. SANDERS. Seven years. Those are the guidelines. He goes to the board in 7 years and he has these 7 years and he says like maybe I have this 7 years and after 7 years I am going to see what happens.

Mr. SHERLEY. He goes up automatically.

Mr. SAUNDERS. Right. This guy, I hate to get down on the State of California, because they let me go, you know, but this guy is going to lose his legs. He has a disease and he has a life sentence in front of him. The State of California decided to wait awhile, checking into his legs, until he was too late, and now they say there is nothing they can do about it, and they are going to cut them off, cut off his legs, get him out

of the way. This guy had nothing. I spent the last 6 months of these last 4 years talking to that guy. I was worthwhile and let me see if we cannot make him worthwhile. That is what is happening here. You are worthwhile, now you help somebody else.

Mr. SHERLEY. It has got to be a chain reaction.

Mr. SANDERS. I spent 6 months with this guy and he is an ex-Marine, a hard-headed son-of-a-bitch, you know, and a hell of a guy.

Mr. CASH. That is part of the prison subculture, Senator.

Senator BROCK. We get a little of that up here.

Senator MATHIAS. That one spreads around.

Mr. SAUNDERS. This guy has no guidelines except what the prison system sets up. No guidelines. He is painting now and he digs it, you know. In fact, he sent the picture of John, a painting of John, and a painting of Glen. He is not a great painter, but he digs it and he is going to come out of that prison some day, I do not know when, without any legs and painting maybe on the sidewalk while he is selling pencils. But, my 6 months in there was meant to get him set up with his own guidelines, and that is you have got to do it, nobody else is going to do it for you.

Mr. SHERLEY. Did he make the wallet?

Mr. SANDERS. He made the wallet and it has my name on it and I am proud of that wallet. There is not much money in that wallet but I am proud of that wallet. But, the whole thing is the return—you say, God, I wish, and I will say here the youngsters, man, they are the most important to me, you know. There are some old guys back there, too; if somebody came in and like I, I mean, did, and like this man did me, and said, you know, I care about you boys. What is going to happen with you, and you got to work for a guy like that. You have got to stand back and say, point me out, show me, you know.

Mr. SHERLEY. I was a three-time loser when John reached out his hand to me in 1968, and since then I sincerely believe that I have become a worthwhile person and can contribute to society outside as well as to contributing to society inside. And if it is always hinging on the first-timer then I would have been gone. If there was not any hope for a three-time loser, I would have been gone, because I was in Folsom and that is the end of the line in California. That is when they cannot do anything else with you, anywhere else, in the system and they send you to Folsom and that is where I was, and Johnny was and only that pulled me out of the muck because it made me want to try, it gave me the strength and the courage to try and only that. It has got to be concern and love and care. You have got to feel it and it has got to be from someone that you feel is worthwhile, too, otherwise it is not worth a damn. If it coming from your immediate family, you do not know whether they are putting you on or saying, yeah, well, that is a good conning and you do not know whether it is or not because they are going to do that anyway, and the only thing that can help, the only way we can change it is with love and concern and care.

Senator MATHIAS. Those things cannot be faked.

Mr. SHERLEY. They cannot be faked because the convict is looking. He is the last one in the world you can trick because he is looking to be tricked and he is looking to be made a fool of. Consequently, he overcompensates a lot of times and as Mr. Cook says, the measures he takes are more drastic than he would take out here.

Senator MATHIAS. One final question to Mr. Sanders which comes to mind. I think where you described very dramatically, of course, this need for communication and what communication can do about how do you relate this to your own parole experience, for example? I think it is important to get this. What I am afraid you are going to tell us is a contrast.

Mr. SANDERS. I am not sure I understand your question, Senator.

Senator MATHIAS. Well, when you went through the parole, the whole parole procedure, did you get the same feeling of communication?

Mr. SANDERS. You mean getting my parole, appearing before——

Senator MATHIAS. Yes, through the official route by which you officially paroled?

Mr. SANDERS. I was lucky, Senator. I had a bunch of letters from the Johnny Cash organization.

Senator MATHIAS. But did you feel the same pull that you are talking about in terms of this person-to-person communication?

Senator BROCK. Would it have been the same thing without Johnny Cash?

Mr. SANDERS. Every time—I have spent about 7 years in prison and every time I have appeared before a parole board I am rushed. I am saying, God, just let them see me: God, just let them see me, and well, I will tell you it is kind of like yelling up, saying God, listen, listen, God, listen, and you continue, and you do not stop long enough to hear the voice saying, Sanders, listen, listen, listen, and you have got two people going together and they are out to tell you what it is about you, and you are out to tell them what you are, and I cannot see any kind of communication going on. They all go by this little 2-minute conversation and a whole backlog here that they can rush through, and——

Mr. SHERLEY. Your track record.

Mr. SANDERS (continuing). And they have white slips there which tells you that the guy passed so and so test and the guy has a high IQ. And then they have pink slips that stand out, that this guy called the bull a bad name, this guy, you know, the bad always stand out much more than the good. You do not have a little piece of paper in bright red that says this guy helps another guy do this, this guy stood up for the warden because he dug the warden in a certain instance. You do not get those, you know, and the fact is that I would not want them, you know, because the convicts might see them.

Mr. SHERLEY. That is right. That is where your communication breaks down again.

Senator COOK. Could I interrupt, and relative to Mr. Cash's remarks to you, Senator Mathias, about how you can break this thing up, it seems to me, Bill, you kind of come close to it in your bill, but maybe not enough. Maybe what we really ought to look to is to have this parole board, Federal Parole Board as the last resort of appeal and break up the country into sections, and set up parole boards in the respective sections so that we do not have all of this 2-minute and 4-minute sort of thing. Maybe you can break that up, Bill. I mean the point that I am trying to make is if we have a system of appeal through the court system, then let us do the same thing, but let it originate at the lower level, and let there be an option with it for the prisoner to appeal if the decision is bad and at one level, but if it is over there, then let it be over. If he gets his parole there, then let it be over, but

let us not have this situation of thousands and thousands and thousands of cases that have got to be determined by eight men.

Senator BROCK. You know what I am trying to say is I would like to see the District Disposition Board assign a man to a case the day the guy is picked up and I want him to live with that man through the trial, pretrial——

Senator COOK. That is right, but when that man says he is ready to come out, it is accepted.

Senator BROCK. That is right. There you go.

Senator COOK. Then you do not have any white slips and pink slips and all the rest of it.

Senator BROCK. And a set of 30,000 decisions coming up here with access to one board and there would be a maximum of 400 decisions in any one district and there you can manage it. Then you have got it on a human personal basis then you can measure it man-to-man.

Senator COOK. That is right. That is where I think we are going to get close to it, because I think this regional concept, although even a State concept——

Senator BROCK. Mine is a district concept, but the same thing.

Senator COOK. All right, and let it stop right there unless, in fact, the individual himself thinks that he has not been treated fairly and then he has the right to appeal.

Senator BROCK. Give him an appellate process right to the top. Right. That is fine.

Senator COOK. And you have not got these men making 35,000 decisions or more than that.

Mr. SHERLEY. They cannot do it honestly. If they are doing their level best, they cannot do it honestly. It is impossible.

Senator MATHIAS. Mr. Chairman, I have just one further thought that occurs to me. There is a wide range of interest in this whole problem through the Senate. The chairman here has taken a great leadership and he comes from one of the Western States and Senator Brock, Senator Cook, and myself are all from border States, and Senator Percy of Illinois who has exhibited a great interest in this, in sponsoring bills in this area, represents one of the big, urban industrial States. Is there any difference in a prison population that you see depending on the kind of area it draws from, or do people pretty well lose whatever background personality they have once they get submerged in that prison population?

Mr. SHERLEY. No. There is definitely a line within a prison like the Okies and the blacks and the militants and the nonmilitants but it does not seem to matter which State you come from. Once you get in a category in a prison if I understand you right, if that is what you are talking about.

Senator MATHIAS. Yes, whether there was such differences within this subculture in the prison that you have to deal with, that you have to deal any differently with prisoners with a rural background, or small town background as against the people that come out of the slums and the ghettos of the big cities?

Mr. SHERLEY. Yes, well the board would have to deal with them differently. They find their own niches once they get in prison. They fall into their own category in there, you know.

Senator MATHIAS. So that the procedure——

Mr. SHERLEY. They have their own taking order, so to speak.

Senator MATHIAS. The procedure we are talking about in this legislation, which allows for greater individual assessment of these kinds of problems——

Mr. SHERLEY. Right.

Senator MATHIAS. Does it adjust itself better then than this massive kind of effort that we are making today?

Senator BROCK. Sure. That is the idea.

Senator MATHIAS. Thank you very much, Mr. Chairman.

Senator BURDICK. I have just one or two questions, gentlemen. I think we can agree that to the extent we can divert early offenders before they get into this chain, I think we can agree that we have to do more about the parole system and we can regionalize it, have more personnel in the regions, so that as has been said here this morning, we do not limit interviews to 2 minutes, and improve the parole procedures that are in. Can we agree on those areas at least?

Now, drawing upon your experience, what can we do to increase the awareness of our communities, of the public? As I said as this hearing opened, that the attitude of people has changed dramatically, I think, in these last 5 years. How can we do more to acquaint the public with the cost of crime to them as taxpayers, and how can we make the communities more readily accept the exoffenders. Do you have any general approach on that?

Mr. SANDERS. Mr. Chairman, I think a beautiful way of doing it is like Senator Brock said, the Seventh Step Organization. Now, they send out speakers, you know, every chance, every opportunity, and you do not have to pay them, just get us there, you know, and let us talk to groups. That is what we will do. And they do a hell of a job. They will talk to you like I am talking, like the boys told me to talk, talk like I am, you know, and they will stand up in front of groups and do a hell of a job like that. I do not know how they are funded or anything, but I know they are working their tail ends off trying to get something done, you know. They are bringing realism right into the classroom, and into the Kiwanis Clubs, anything, you know.

Mr. SHERLEY. But up until the Seven Step Organization, I would point out the fact that you let a man out of prison that has been there 8 years, 6 years, and the only person he can really relate with is someone—well, if you cut your finger the only way I know how you feel is that I have to cut mine a little bit, and I say I know how you feel. But, it was against the law like it was a parole violation, and you could be sent back to prison to be caught talking to another convict. One convict outside a prison talking to another convict, you would be sent back for that. In other words, we are not going to let you communicate with anybody that you can. And I think before the Seventh Step Organization, I think we have got it now so they can communicate, have they not, and they can meet in clubs and try to help one another.

Senator BURDICK. Have you any departing words for us, Mr. Cash, in this area?

Mr. CASH. I think a lot of good work could be done on a regional or State or city level, possibly even the mayor or the Governor of the State or the commissioner of corrections could ask for or enlist the aid in the rehabilitation programs and the parole program from, as I said

before, ministers, the clerks, from the responsible businessmen and of other citizens that might possibly care.

Thank you.

Senator BURDICK. Well, before we conclude this hearing, I want to personally thank each one of you and I want to commend you. You have not been reluctant about telling about your own background, and I think you have made a contribution that will pay dividends in the future. So we are very grateful to all of you.

Thank you.

The hearing is still in session.

Our next witness is Dr. Nat Winston, psychiatrist from Nashville, Tenn. Doctor, will you approach the witness table?

STATEMENT OF DR. NAT T. WINSTON, PSYCHIATRIST, NASHVILLE, TENN.

Dr. WINSTON. Mr. Chairman?

Senator BURDICK. You might just wait a minute until we get a little more quiet.

Mr. WINSTON. I have submitted a formal statement but if I may I will briefly, very briefly, summarize it for you.

Senator BURDICK. Your full statement will be made a part of the record without objection.

(The full statement of Dr. Winston follows:)

PREPARED STATEMENT OF DR. NAT WINSTON

I am Dr. Nat T. Winston, Jr., Chairman of the Board of American Psychiatric Hospitals, Inc., and Vice President and member of the Board of Directors of Hospital Affiliates, Inc., of Nashville, Tennessee.

I have been asked to limit my brief remarks to my experiences while serving as Commissioner of Mental Health in the State of Tennessee from 1965 to 1969. Among my duties was the responsibility for a 200-bed maximum security hospital housing the psychotic offender, as well as the responsibility for those inmates of our state penal system who developed psychoses following their confinement. Also, I served during the same period of time as Chairman of the Committee on Legal Psychiatry of the Association of Mental Health Commissioners in the United States.

I, as a psychiatrist, realize that generalizations when applied to individuals, are always dangerous. In spite of this, I would like to take the license of making a few such generalizations at the outset.

First, further clarification is indicated in the area of those emotional and mental states which absolve the individual from guilt in any unlawful act which he might commit. It is the tendency of modern-day psychiatry, in my judgment, to make this problem an all too complex procedure which results in constant conflicting testimony on the part of so-called expert witnesses. Certainly the two generally applied rules, that of the irresistible impulse and the knowing of right from wrong, are not only inadequate to judge guilt, but leave too much room for debate and contradictory opinions. In Tennessee we applied the very simple rule that any evidence of psychosis absolved the individual of knowledgable guilt and that in the absence of psychosis, no matter how bizarre the criminal act, the individual is still held responsible. I personally believe this to be a simple, fair, equitable and accurate determination of one's guilt or lack thereof in any given case.

Secondly, I would generalize that the professionals in the field of psychiatry, psychology and sociology have been overzealous in their efforts to bring about meaningful reform. Without maliciously and deliberately intending to so, I personally feel, we have led the American public to believe that with the tools of modern treatment, virtually any maladjusted individual can be returned to a reasonable adjustment enabling him to function in society. I believe this is absolutely not the case. I cite as evidence of my opinion the fact that many

sophisticated systems and theoretical approaches have been applied to the rehabilitation of convicted felons and the rate of recidivism and the problems still existing in our penal systems attest to the failure of these approaches.

The third generalization I would make is that once the personality pattern of any individual is established (usually by the time he is fifteen to eighteen years of age), very little basic change in that personality structure can be made. He may have from time to time a mental illness, superimposed on his underlying personality structure which mental illness, in most instances, can be effectively treated. Once so treated, however, the basic personality structure remains intact and essentially unchanged. In other words, there are certain individuals who will not be changed by any known form of treatment today.

If I make no other point than the following in my statement, I feel I will have accomplished my purpose, and that is this: All of us, including the professional in the field, make the basic error of assuming that other people think and react and approach life the same way we do. It is an understandable mistake, because the only way we know how people approach life is through our own experience. Responsible people assume that all other people can be appealed to with the same reasoning and logic to which we, as responsible people, respond. This I assure you is not the case, and this error accounts for many of the mistakes made in approaching the problems of certain confined criminals.

Probably the most common personality classification fitting the majority of the so-called "hard-core" population of our penal system is that of the psychopatic or sociopathic personality type. This individual is *not* by definition psychotic. He is therefore considered responsible in the eyes of the law. He is characterized by impulsive behavior without thought for the consequences of his behavior, a lack of anxiety and guilt as most people perceive guilt, a relatively inability to profit from past mistakes, a tendency to live for the moment without long-range planning for the future, great narcissistic or self-love needs, and almost paradoxically the ability to remain loyal to any given code which is frequently the criminal code. By these very characteristics, he is destined for trouble, whether he remains in a free society or confined. It it almost impossible for the average person to conceive of how anyone can think and feel this way and if one accepts the postulate that basic personality does not change, admittedly a fatalistic element is introduced.

Coupled with the above-mentioned characteristics, is the tendency of the sociopath, under sometimes the slightest of stress, to move into a true psychotic episode (often lasting only as long as the stress itself exists) and from which he frequently and readily recovers, returning to his original sociopathic personality structure. At such times, these individuals are usually transferred to the hospital unit of the prison where they are removed from the stress and treated with medication and psycho-therapy. Almost always they recover and are returned to their previous prison routine.

The individuals confined and treated in hospitals for the psychotic offender on the other hand, represent an entirely different problem. They are individuals who most often do not have a sociopathic personality, who suffer from a true schizophrenic-type of psychosis and who may have been psychotic for months or years prior to the commitment of a crime. Through their delusional system, they feel led by God to commit a crime, or, perhaps, are "told" by hallucinatory voices to carry out certain criminal acts. They are no different, psychiatrically speaking, from the individuals who make up the long-term residents of our mental hospitals, except in the fact that in addition to their mental illness, they have also commited a criminal act. They are not sentenced by the court, but are confined to a hospital until such time as the staff feels they have recovered.

The treatment of such individuals is the same as the non-offender committed to a mental hospital, and consists largely of medication and psycho-therapy. A good number of these individuals become controlled and symptom-free on medication and are returned to the court where they are usually released after having been found "not-guilty" by reason of insanity at the time of the crime.

Very few, if any, of such offenders were released prior to the advent of tranquilizing medication in 1954. Since that date, large numbers of psychiotic offenders have been released as symptom-free creating a very special problem: Frequently after returning home, they stop taking medication, again develop psychiotic symptomatology and not infrequently, commit other crimes requiring re-admission to the hospital.

To insure the protection of the patient and the public in such cases, we were instrumental, in Tennessee, in passing a law which provided the following.

If, in the judgment of the medical staff at the hospital, the individual would be dangerous to himself or to society if he discontinued medication, he could be made to report back to the hospital periodically for check-up. If at any time, in the judgment of the staff, he was again psychiotic he could be re-admitted without further recourse to the courts. This furlough system could be continued for the life of the patient. In my opinion, this provides the best safe-guard to insure the continued freedom and good health of the patient as well as insuring the protection of the public. I would strongly recommend to this committee the adoption of such procedure throughout the nation.

With regard to the inmates of the penal system proper, I would make the following observations. The mere act of confinement itself greatly increases the stress which may lead to a psychotic break, but which most frequently leads to augmentation of the symptoms described in the sociopathic personality structure. Thus, although he is not basically homosexual, the inmate may engage in homosexual activity purely as an impulsive expedient for the immediate gratification of his sexual impulses. Through intensification of his narcissistic needs, he may need to establish himself as a leader by whatever brute force or intimidation it takes. He may remain intensely loyal to his criminal element to the point of carrying out violent acts to preserve the element. Through his ability to be ingratiating and winsome, he may appear to be cooperative and as "having learned his lesson." With this in mind, there are several suggestions which I would make which would decrease tension during imprisonment and during the parole period.

1. Prescribing periods of confinement for specific types of crime may not always be advisable. With few exceptions, such as a particularly brutal crime or a known repeat offender, I believe an indefinite sentence would be preferable with the release or parole being left to the judgment of the professionals at the institution itself.

2. Following the imprisonment, an accurate evaluation should be made of the individual from the psychiatric, psychological and sociological standpoints and we do have accurate tools for this purpose. In those individuals not perceived to be hard-core sociopathic types, various levels of confinement should be instituted commensurate with the inmate's ability to respond to varying degrees of privilege.

It has been adequately demonstrated in psychiatric hospitals with patients also suffering from sociopathic traits but who have not committed a felony that a level system of behavior modification can be effective. In such a system, the individual receives more and more privileges over a prescribed period of time based on his acceptance of the responsibility for his own behavior. Should he violate the rules as he progresses from level to level, he is moved back until such time as he learns to adjust at the top level. This motivates the individual towards moving toward acceptable behavior and gives him gratification from the rewards of so behaving.

Included in such a level system, there should be such activities as work programs outside of the penal institution in those cases not considered to be sociopathic in nature. In addition, much of the unrest and tension precipitated by impulsive and dangerous homosexual acting out could be averted by congugal visits. Such visits would also be an earned privilege and are indicated along, aside from the humane aspects, by the benefits in lowered intra-prison tension.

3. For those both working in the prison as well as out of the prison, I feel sufficient wages should be paid so that the inmate can contribute to the family income. I would also strongly urge that some kind of retributive compensation be made by the inmate of those families who have been wronged by the inmate's criminal act. I believe, again, that this fosters responsible behavior.

4. The parole system and the value of long-range follow-up are already established procedures in the prison system. By direct analogy, it has been conclusively proven in the psychiatric field that those patients who are followed following discharge for long periods of time, perhaps indefinitely, are significantly more likely to stay sympton-free than those who are not followed. I would strongly urge that consideration be given to establishing an indefinite period of parole status for those parolees considered by the professional staff of the institution to have a higher potential for recidivism. This would enable enable the parole board to keep a closer surveillance over higher-risk cases, which would not only be a protection to the general public, but more importantly, would help insure the continued adjustment of the parolee.

In closing, I would like to emphasize that, in spite of the good intentions of the professional in the field, not every criminal can be rehabilitated any more than

every mentally ill patient can be "cured". Whether it is liked or not, the fact must be accepted that there are no known methods of rehabilitating certain individuals. We, as responsible people, must not accept the guilt nor the blame for those individuals for whom it is beyond our power to help. If we always remember the basic tenet that other people do not approach the problems of life the same way in which we, as individuals, do, and that we cannot appeal in many cases to the same sense of reason and fair play in others that we ourselves respond to, we will avoid much grief and heartache as we approach this terribly complex problem facing the penal systems of our nation.

Dr. WINSTON. I am Dr. Nat Winston of Nashville. I am presently president of American Psychiatric Hospitals, Inc., a chain of private psychiatric hospitals and the vice president of the Hospital Affiliates and a member of that board. I served as the commissioner of mental health in Tennessee for almost 5 years during which time I had the responsibility of psychotic offenders, a 200-bed hospital, as well as the responsibility for those inmates in our penal system who became psychotic during their incarceration. I also during that time served as national chairman for the committee on penal or legal problems for the commissioners of mental health in the United States.

I will very briefly summarize my statement. First, I would like to say that we need much more work in the area of criminal responsibility relative to the psychotic whether insane or not insane. It is a confusing area that leaves much room for doubt and conflicting testimony. There has been much national interest recently because of various political associations. Without elaborating, let me say the rule of thumb we use in Tennessee, which proved very satisfactory and which I would recommend for the rest of the country is that if the individual showed any symptoms of psychosis then he was relieved of responsibility at the time of the commission of a crime.

Now, I would also generalize and I am being very general in this by saying that I think we in the profession, and I am being self-accusatory in some respects, sometimes we have been overzealous in that we have led people to believe that if given proper rehabilitation specialists we can correct any person, we can readjust his personality. We can, in many instances. There are some, in my judgment, however, that cannot be corrected. These are the ones that you referred to, I think, Mr. Chairman, as those that have to be incarcerated and I think we cannot blame ourselves for that, or assume the blame. It is just a fact that we have to accept and the problem is separating and isolating these individuals from the first offenders who can be rehabilitated. And I would say that we as professionals always make the error, as many people do, of assuming, and this is so difficult, and I am a psychiatrist, of assuming that people think that a criminal can be appealed to with the same sort of reasoning that we as responsible individuals can. In many instances this is not the case. Some people just do not respond to the same appeals that we respond to, and this gets us into difficulty at times if we are not careful.

Another generalization I would make is I think this would be generally accepted in the psychiatric world, is that the basic personality of people is at best difficult to alter. We all have a certain personality pattern. We may become mentally ill on top of that, with a psychosis or a neurosis, but when we treat that, and that is treatable, we are left behind with our basic personalities. Altering this is at best difficult. The problem in a penal system, in my brief experience is with these hard core criminals who more often, not always, but most often tend

to fit into the so-called sociopathic or psychopathic personality type. These are people who are characterized by implusive behavior. They have difficulty in profiting from past mistakes. They do not have the same kind of anxiety or quilt that you and I have. They tend to live for the moment, without too much concern for the consequences of their acts. They have a lot of Narcissicism, self love, and we have heard this expressed here and they paradoxically can be loyal to a code which in most instances, of course, is the criminal code. I realize that with these characteristics (and I do not think they are the majority of the ones in our penal system) they are destined for problems whether they are in or out of the penal system, in my judgment. And it is this individual who understress frequently becomes psychotic

Many sociopathic individuals become psychotic but they are readily treated when the stress or what have you is removed. This is a different problem from the offender who is psychotic at the time of the commission of the crime, who has a true mental illness, who may have been psychotic for years, who feels led by God, say, or a voice, say, to commit a crime, and they are psychotic at the time. Those are the ones I had responsibility for in the criminally insane program. They are treated like any other mentally ill individual, and they can recover. We have a unique problem to develop since 1954 when the first tranquilizers came. Prior to that time, few of these psychotic offenders ever left the hospital. Now, with tranquilizers they do become symptom-free and they do return back to trial where they are found most often not guilty by virtue of insanity at the time of trial and they are released. And, frequently, I have seen this. Frequently they return home symptom-free, stop taking their medication, become psychiotic again, and then commit other crimes and have to be readmitted.

In Tennessee, we were instrumental in passing a law which I think not only protects the psychotic individual, which is certainly essential, but also the public, in that, if in the judgment of the hospital when he leaves the hospital if he is likely to become psychotic again and commit crime if he stops taking medication, then he can be periodically returned on a furlough or parole basis back to the hospital. If he is psychotic on his return, they have the authority to readmit him without further recourse to the court until such time as they feel he is well again. And this is the best way for the psychotic offender, to stay well, and stay out of the hospital as well.

Senator Cook. Well, Doctor, is this done on an out-patient basis?

Dr. Winston. Yes, sir. Once he has been declared sane and not guilty by virute of insanity, and is returned to the community.

Now you have seen (and this always gets a lot of publicity) the former mental patient who commits crimes. And by the way, there is an interesting aside here. It is a known fact that people who have been hospitalized in mental hospitals are less likely than the general public to be involved in violent or criminal acts as a statement of fact. But, there is that patient who occasionally does and that is what we designed our law for, for this individual we feel might return back and become psychotic again and engage in a violent crime, to protect him as well as the public.

Senator Cook. What is the—what is your capacity in Tennessee?

Dr. Winston. At the hospital?

Senator Cook. Yes.

Dr. WINSTON. 200 beds.

Senator COOK. That is for the whole State?

Dr. WINSTON. Yes, sir.

Senator COOK. Located where?

Dr. WINSTON. In Nashville.

Senator COOK. In Nashville? Do you utilize—what kind of psychiatric staff do you have?

Dr. WINSTON. As a matter of fact, we stole one of your psychiatrists from Kentucky, Senator Cook, who headed up that for a period of time. It is staffed by psychiatrists and when I left there 3 years ago, I believe there were about five psychiatrists on the staff.

Senator COOK. How many psychologists?

Dr. WINSTON. I am unsure. Two or three social workers, psychiatric social workers, but I would stress that these individuals are no different from the ones in our regular mental hospitals with the exception that they have in addition committed a crime, and they are treated in the same way.

Senator COOK. But, it is a permanently, confined institution—what I am talking about is, it is—well, let me by comparison, is it a maximum security?

Dr. WINSTON. Yes, sir.

Senator COOK. It is a maximum security?

Dr. WINSTON. Yes, sir.

Senator COOK. So, actually, I do not really mean to be critical, but in a way, if the court makes the determination that someboday should go to your institution, it is for an indeterminate period, or is it 30 days, 90 days, what is the evaluation period indeterminate?

Dr. WINSTON. Yes, sir. He is usually declared psychotic at the time the trial comes up, and they are sent for an indeterminate time until he is well.

Senator COOK. Well, what I am really trying to say is even for a minor offense?

Dr. WINSTON. Right.

Senator COOK. Even for a minor offense, if an individual comes to court, and a plea is made that he needs psychiatric treatment, rather than get himself out of the whole situation in 30 days he might wind up in a maximum security hospital and stay there for a year or more?

Dr. WINSTON. That is inconceivable; yes, sir. But, the safeguard there is, hopefully, and I think it is true in Tennessee, that when he went there he was treated as though he had been committed by the court to a mental hospital and when he is well, then he is referred back to that court for disposition.

Senator COOK. Well, we utilize a program which is called the 30-day observation with a report directly back to the court.

Dr. WINSTON. Well, now, we have that, too, if there is a question. But he is declared insane and there is a difference at the time the trial comes up and they present evidence.

Senator COOK. Now, you say that there is an absolute declaration?

Dr. WINSTON. Yes, sir.

Senator COOK. In your instance——

Dr. WINSTON. In some case, yes, sir. And then some are sent for the 30-, 60-, or 90-day observation period, and that is then referred back to the court.

Senator Cook. Out of 200 beds are you maximum at all times?

Dr. Winston. Well, I left, and again when I was there, there were about 150 patients there.

Senator Cook. About 150? Out of 150, how many would be hard core drug addicts?

Dr. Winston. Drug addicts? Probably very few. Probably very few. These people would have to be psychotic. If they were drug addicts, this would be secondary to the primary reason for being committed.

Senator Cook. In other words, you treat the psychotic different than you would treat the drug addict from the court standpoint?

Dr. Winston. Yes, sir.

Senator Cook. Do you have a methadone center at this hospital?

Dr. Winston. We did not at the time and I resigned in 1969 and methadone was not then used at that time.

Senator Cook. Down there?

Dr. Winston. In Tennessee; yes, sir.

Senator Cook. Because it has been in production in this country since 1964.

Well, what do you do with the hard core drug addict from a psychiatric standpoint within the framework of the judicial system and the prison system?

Dr. Winston. To be perfectly candid, I have had very little experience with the hard core drug addict. He would, I believe, in Tennessee, I would be correct in saying he would go directly to the penal system had he committed a crime, not to our hospital. Now, we had within the penal system itself a 20-bed hospital unit, psychiatric unit, and the usual source of withdrawal, and what have you, treatment was instituted there.

Senator Cook. Thank you, Mr. Chairman. Excuse me, I did not mean to interrupt you.

Dr. Winston. The sociopath, when he is confined, I think, are your troublemakers that Glen Sherley—and I know Glen well—is referring to, that when they are confined it increases their stress, it augments the characteristics that I outlined above. There is homosexual activity, and most sociopaths are not basically homosexuals but they have an impulse of sexual feelings which the only resolution of is the homosexual act at that point, and it tends to aggravate this condition.

In closing, I have some brief suggestions I would like to make. In my experience as a psychiatrist, just tangently looking at the prison population, I would think particularly with first offenders that there be, in many instances, no definite period of time for the sentence. When Glen said when you are there for 7 years and you know you are there for 7 years, you begin to route your way in and establish, and manipulate any way possible your position in the penitentiary.

Senator Cook. You recommend indeterminate sentences then?

Dr. Winston. In most cases to be left up to a board at the penitentiary as the determining factor as to when this person, in their judgment, has been rehabilitated. I think certainly we would have the psychological tools to do this. I would certainly recommend segregating those that, let us say again, are the hard core, sociopathic individuals from those that are not, and put them in various levels of confinement for those who are not. And in our mental hospital and I can speak with some authority here, we get sociopaths that are referred

there rather frequently rather than going to prison, and we have developed a level system, behavior modification system which does not "cure them," but does make some appreciable differences. In addition, an indefinite period of parole would possibly be helpful, similar to what I described in the Tennessee law for those who were psychotic offenders.

These would be my recommendations on the basis of my experience.

Senator Cook. Doctor, you know the Federal prison system is about the size of the California system. We have approximately 20,000 to 23,000 that are in Federal prisons. Now, it has been estimated that of those 23,000 Federal prisoners, at least 20 percent right now need psychiatric help. Now, what I am wondering that in the approach that you have made, that a determination has got to be made at a pretrial, or at a court proceeding, in the past the surveillance of the court that this individual should come to your institution, now the thing that bothers me is by reason of this and by reason of having it at this end of the spectrum, how many people are in the Tennessee system today that really need psychiatric help because they did not clear that hurdle and are in there, and they are really in all kinds of trouble?

Dr. Winston. I would say the percent would be about the same, 20 percent, as it is in the Federal system, would be my estimation. Now, again, I am making a distinction, Senator Cook. All of us could use psychiatric help, we could all improve our functioning in life with psychiatric help.

Senator Cook. Now, that sounds like an advertisement, Doctor, and I am not going to buy that.

Dr. Winston. All right.

Senator Cook. I appreciate that.

Dr. Winston. I am making a sharp line distinction, a black and white distinction between insane and not insane.

Senator Cook. Well, I could only hope that if we establish any kind of a system, because the one we have now is absolutely hopeless, you might as well forget it, and if you have got, Lord, if you have got 4,600, you know, who need psychiatric help in the Federal system and how many psychiatrists do we have in the Federal system? We have 35 and I suspect most of them are here in Washington. If you really want to know the truth, that is psychiatrists and psychologists, and I imagine that most of them are housed over here somewhere, so we are really not getting the job done. And I only hope that if we really zero in on the system that we do not set up a system where we look at it from the inception of this poor guy's route through the system and forget about the ones who we say, well, he did not pass the test here, so let the court go ahead and give it to him, and let us wait and see, and put him up to the majestic parole board that does not spend any time with him and makes no determination.

Dr. Winston. May I say this? I sincerely feel in the majority of cases—just being confined creates psychiatric problems, but the sort of peer system that you mentioned, the buddy system, the seven-point program has far more value than formal psychiatric treatment is my own honest opinion.

Senator Cook. You see, the thing that bothers me, Doctor, is that what we are all trying to do, we are all trying to put another patch on a lousy system that was established to begin with to take everybody out of society who did something wrong and forget about whether, by

God, they ever got back or not and the hell with it, and the whole problem of is it better to look about at this whole system and forget about everybody in it now, and then try to pull the whole thing through, kicking and screaming into the 20th century, whether it likes to come or not. And, you know, we have had guys come before us—every time we have a prisoner come before us, the fellow from the prison talk, and he makes it sound so great that, gee, I want to go up to Lewisburg and have dinner he made it sound so great and I said, gee whiz, what have I been doing going home at night to eat for, and somehow I just cannot buy that and I do not think anybody else can either. And it just seems to me that the evaluation you make is how would you start out with the prison system, if you absolutely had none?

Dr. WINSTON. You start from scratch.

Senator COOK. That is right. And then sit here and come up with a system that reestablishes and recreates everything. You know, we have got Federal prisons that were built in 1890 something or other, and, you know, you talk about patching a human being and they are patching the building and they spend more for maintenance than they do for rehabilitation and I do not think there is any question about that, so it has just all got to be wrong.

Dr. WINSTON. I think that is right. I would also say this. In our mental hospitals there are some people again of that 7,000, for example, hospitalized in Tennessee, or several hundred or perhaps several thousand of those who in light of what we know today will, in my judgment, always be mentally ill. And I think we have to accept that as a fact of life. But, there are 7,000 admitted annually and who get out annually, so those are the ones we concentrate on in my judgment.

Senator COOK. And, unfortunately, for you all as a profession, you all in clinical psychiatry or clinical criminal psychiatry, you always wind up reading about that one that you let loose from the institution who then proceeded to really do something serious and horribly damaging to the community. And that is the only one you read about. You do not read about all of the other 6,999 that get out and integrate themselves back into society.

But, send one out that you agree has been rehabilitated, and let him pick up a gun and walk down the middle of Main Street and the whole profession gets drowned in the consequences of one instance.

Dr. WINSTON. Yes, sir. I have been there.

Senator COOK. That is called objective news.

Senator BURDICK. Are you familiar with the experimental therapy program at the Federal penitentiary at Marion, Ill.?

Dr. WINSTON. No, sir.

Senator BURDICK. I was just wondering how their approach was similar to yours? That was all.

Dr. WINSTON. The penitentiary in Washington State and I do not remember which one it is, is very similar to the center that Senator Cook has described in Kentucky. Interestingly, I was superintendent of a psychiatric hospital for 4 years, when we started from scratch, and this was written up in the Reader's Digest, as the finest program at that time in the country and in their opinion. And we started from scratch breaking with tradition and we let the patients set their own rules as to what time they turned out the lights, what time they got up. They had by far more strict rules that they determined themselves than we had planned on before we decided to let them do it. As Glen

Sherley testified here it gives the individual a sense of responsibility, to participate in this, and I think this is the direction that the penal system should go and the mental system should go.

Senator BURDICK. You have gone over the ground a little bit with Senator Cook, but do you have anything to add as to the procedures you might use so that more of the offenders that are ill, mentally ill, are diverted to your program? How do we do that at the stage that the man is arrested?

Dr. WINSTON. Well, maybe I am being too precise on this point. Again, I would say that there are many who would be classified as, let us say, severely neurotic in our prisons. My responsibility was to those who were insane. And they are two different illnesses. It is like, you know, pneumonia versus appendicitis. I had only had those who were truly insane and were not considered, therefore, responsible at the time of their act. I doubt that many who were mentally ill at the time of the crime are in the penal system in Nashville, and I was out there at least once a month. In the penitentiary, probably out of the 1,500 inmates in there, there were probably only 10 who were psychotic. Now, some may slide in or out of psychosis after confinement depending on the stress placed on them. But, only 10 were psychotic most of the time and they were transferred to the psychiatric unit when it was adjudged that they were going to be psychotic problems over long periods of time. I realize I have not answered your question.

Senator BURDICK. I wanted some procedure you might use to identify that person.

Dr. WINSTON. Yes. We have——

Senator BURDICK. Earlier.

Dr. WINSTON. Yes, sir. We have psychological tools that I referred to in my formal statement that will really in 95 percent of the cases identify the psychotic individual; yes, sir. And I think a pretrial screening would be excellent.

Senator BURDICK. You have been very helpful this morning, Doctor, and we thank you.

Senator COOK. Thank you, Doctor.

Senator BURDICK. Our next witness is Hon. Francis L. Van Dusen, judge of the U.S. Court of Appeals for the Third Circuit, Philadelphia.

Judge, would you mind having the probation officers here with you?

Judge VAN DUSEN. Not at all. I would be delighted to have them.

Senator BURDICK. And would Wayne Jackson, Chief of the U.S. Probation Division, Administrative Office of the U.S. Court, Washington, D.C.; and Ben Meeker, Chief of the U.S. Probation Office of Chicago, approach the witness bench also.

STATEMENT OF HON. FRANCIS L. VAN DUSEN, JUDGE, U.S. COURT OF APPEALS, THIRD CIRCUIT, PHILADELPHIA, PA.; ACCOMPANIED BY WAYNE JACKSON, CHIEF, U.S. PROBATION DIVISION, ADMINISTRATIVE OFFICE, U.S. COURTS, WASHINGTON, D.C., AND BEN MEEKER, CHIEF, U.S. PROBATION OFFICE, CHICAGO, ILL.

Judge VAN DUSEN. Senator, I am very privileged to be here today and also to remind you, if I have not told you before, and I think I did on one occasion, but you probably forgot that my interest in the

offenders started with your fellow North Dakotan, Senator Langer, who I met 17 years ago in 1955, when I first became a Federal district judge. And Senator Langer persuaded me to visit the Federal institutions and the first thing I did the day after that was to go to Lewisburg. Since that time I have visited the penitentiary at McNeil Island, Wash., Lompoc Correctional Institution in California, and the Marion, Ill., Institution, to which you referred to and several others.

I want to emphasize here what a fine thing it was to have Mr. Cash and his group, because in this 17-year period when I have been interested in corrections, it has been perfectly clear that the public has not been willing to accept probation. Of course, probation is the system under which the Federal offenders and particular the first offender is given a chance without being sent to the jail and becoming contaminated.

Senator BURDICK. Judge, would you mind an interruption for about 3 minutes? I have something important I have to do and if you do not mind, I will be right back.

Judge VAN DUSEN. Certainly.

[Short break.]

Judge VAN DUSEN. It is the thought of the American Bar Association and most legal scholars in the field, and I think also the criminologists that the first thought of the sentencing judge should be probation. It is only where the offender cannot satisfactorily adjust on probation and will be a danger to society or himself if not confined that he should then be sent to jail. And, of course, we all know that putting a man on probation only costs 10 percent of the costs to the taxpayers of sending him to jail. While on probation, the offender can be supervised by a probation officer in his own home, learn to adjust in his natural community and not be set aside in some strange unreal life which he is never going to return to if he ever does get out of the situation in jail. And that is why we feel that it so vital that we be given the opportunity to have Federal probation operate on a fair basis and be given enough officers. And, as you know, we asked for 348 additional probation officers, and now there is a conference committee which is considering the matter. And I urge your committee with all the earnestness I can command to see that we get just as many of those probation officers as we can because it is changing the motivation, as has been pointed out here this morning, it is motivating the offender to obey the law which is the key to rehabilitation.

Senator BURDICK. What do you think about the suggestion that we have five regions and we have——

Judge VAN DUSEN. I think that is fine. I think that is fine, but that concerns the man who is in the institution and, of course, he has to be treated too. And I think that your bill which your staff has prepared is an excellent step forward and, personally, as you know, and I cannot speak for my committee because they have not had a chance to look at the bill yet, and we will look at it and report later to you but at the moment, speaking for myself, I think it is a fine bill and as you know, in my statement I have made a few minor comments on phraseology, and one of them I think I would like to correct now. When I talked to Mr. Meeker, I believe he called my attention to the fact that I have an error in the middle of the statement (on page 9 of my statement) section 32 of the Federal Rules of Criminal Procedure "present-

ly provides", and I would like to delete the word "presently provides" and substitute, therefore, the words "will probably be amended to provide" because we have several rules in the works, which as Mr. Meeker called my attention to have not been finally adopted yet. But, it is almost certain that the Rules Committee will in the next 2 years make a change in the Federal Criminal Rules, and it will take a certain amount of time before this language that I had in mind becomes final, but it probably will be adopted. So, that change should be made to apply to the present wording of Federal Criminal Rule 32.

But, I only made four suggestions for amendments to the draft bill on pages 9 and 10 of my statement and I would like to have my colleagues here speak on this bill. I do think that it is a very definite improvement over the present situation, but that the Parole Board and the Department of Justice should be allowed to comment on it which I know they did yesterday and their comments should be carefully, very carefully considered. There are four things that are contemplated by your plan, which I would say were excellent, namely, (1) is the regionalization; and (2) is allowing the prisoner to see his file; (3) is the statement of reasons for granting or denying parole; and (4) is the grant of permission to have a parole advocate. I would not recommend that that parole advocate has to be a lawyer, because I think it puts too great a drain on the legal profession to be running to the institutions all of the time for the parole hearings. But, I would like to hear Mr. Jackson and the Chief of the Division of Probation comment on that bill if you think it would be appropriate at this time, and before we go to the other bills.

Senator BURDICK. Yes. Would you comment on the bill and also upon the four suggestions that the judge has made?

Mr. JACKSON. Good morning, Mr. Chairman. I am, of course, bound by the same constraints that Judge Van Dusen referred to in the absence of the judicial conference action. But, I am in harmony with his statement on the bill.

We, of course, are not aware of the effect on the Board of Parole as it is presently constituted but I think the regional representation, and the advocate in the hearing can create a more meaningful hearing than now. It is more of a pure interview at the present time. But, I think as Judge Van Dusen outlined, we would have to support the new idea.

Senator BURDICK. One of the problems we have here is whether or not we are creating any further rights here. Would you require an advocate by law or leave that discretionary? And if required by law, if the offender could not afford an attorney, would you appoint one for him? How far would you go with this?

Mr. JACKSON. I can only draw a parallel structure to what presently occurs in the U.S. courts: Every defendant who appears before the bench is entitled to legal representation. And in a great percentage of cases I have seen, if he is unable to provide his own counsel, the court seems to be reticent about proceeding unless counsel is provided for the defendant.

Senator BURDICK. Using a figure, would it not be over 90 percent of the inmates who are indigent?

Mr. JACKSON. I would say so; yes, sir.

Judge VAN DUSEN. I think the courts have not gone so far as to require counsel every time a probationer comes before them, and I feel

from my talks with other Federal judges throughout the country, and with representatives of the bar, that it would be wholly impractical to require that every man who came up with a request of the parole board should have counsel. These are hearings which are held at the institution which is often in a very small community and the bar of Union County, for example, where Lewisburg is probably has only six lawyers. There are approximately 2,000, as you know, inmates there, and to arrange for a legal representation every time before the parole board member came to the institution, or the man came before the parole board member or a parole examiner I think would be wholly impractical or——

Senator BURDICK. What about leaving it to the discretion of the court?

Judge VAN DUSEN. Yes. I think that he can always appeal. As I said in my statement, the judicial conference of the United States has gone on record that the present statutes provide a parolee who has been denied due process of law with ultimate appeal to the courts. He can bring a suit in the U.S. court, the man in Lewisburg, and I am just taking that as an example, the U.S. District Court for the Middle District of Pennsylvania if he has been denied due process of law, after he has exhausted these procedures before the parole board. So, if the failure to have counsel, at least in these administrative proceedings——

Senator BURDICK. What would be his grounds for appeal?

Judge VAN DUSEN. Well, he would bring a civil rights action. He would say he had been denied his civil rights, due process of law.

Senator BURDICK. I see.

Do you have some comments to make on this area?

Mr. MEEKER. Senator, I am Ben Meeker, chief of the Chicago Federal Probation Office and on this particular issue it seems to me that the matter of the parole hearing is somewhat different than we think of as an adversary proceeding. Actually, I think what we are after is developing a system where every possible consideration is given to the applicant who appears before the parole board. It is not on the other hand, as if you had an advocate up here who is going to prosecute him and say he is not entitled to parole and on the other hand, a defense counsel saying he is entitled to parole. I think what we have here as a correctional specialist making an assessment in a correctional setting of whether this man is now ready for parole. I would think that the discretion as to just what procedure should be developed might be left to the parole board and the institution with some formal provision for specialized personnel. Maybe there should be an attorney on the staff of the Bureau of Prisons whose role would be to work with men who are applying for parole, to be certain that they understand all of the procedures they need to go through or perhaps, as was brought out very clearly here this morning, there is a problem of time. I think that if the inmate is given an opportunity to really press his case, and it is bolstered by an adequate report which has been prepared by the diagnostic and evaluating people in the institution, that many of the concerns of prisoners would be met. I think one of the criticisms has been, both at Federal and State levels, this very brief appearance and the inadequate preparation that goes into a presentation of a petition for parole.

Senator BURDICK. There would be no objection to his appearing with a friend or a counsel if he provided it himself. But I follow what the judge has said; it would be quite a burden to provide a lawyer in some of these smaller towns where there is a heavy prison population.

Judge VAN DUSEN. Yes. And this is generally true. Generally, the Federal institutions are in rural areas.

Senator BURDICK. As long as you say in the end there is——

Judge VAN DUSEN. There is judicial review. That is the position which the Judicial Conference took in April, just last April, on a provision in not one of the five bills that I was asked to comment on, but a similar bill, and I have it as a footnote on my statement. It is footnote 2 on page 2 and the exact words were the words as they appear in the Judicial Conference minutes for April, the April 1972 meeting, were:

> The Conference agreed that if the constitutional rights of a parolee are infringed he has an adequate remedy under existing provisions of the United States Code.

He can bring mandamus too. There are various civil rights statutes he can use.

Senator BURDICK. Because it is the probation officer who supervises the offender released on parole, what would you recommend for the best possible job that we do not do now? This is probably a question for both of you.

Mr. JACKSON. Well, Mr. Chairman, actually it is difficult for me to understand the logic of our current dilemma. As constituted now, the Federal Probation Service is composed of a very viable cadre of well-trained qualified people. I think that quite recently we have come to be actually considered as part of the law enforcement spectrum, which has not been true in the past. I think all too often before the ends of probation had been felt to be contrary to the goal of law enforcement, but now it has finally come to surface that we actually are part of this spectrum.

Here is our service right now—and we are not talking about the investigative agencies who are looking for offenders or doing police work—and right now we have 49,000 convicted offenders with whom we are asked to work. We talk about futuristics. As I say, this is hard for me to understand because here we have 49,000 convicted offenders and when we attempt to bolster our strength to work with them so that we may somehow counter the 2-minute parole interview, we have a very difficult time. I just do not understand this in terms of our lack of manpower.

I am going to amplify my statement at this point because since we have prepared it we have come up with some other statistics and actually we now have the firm statistics for the last fiscal year which we did not have as I prepared my statement. At the present time under the supervision of the Federal Probation Service there are 640 officers, and among these 640 officers we have gentlemen like Mr. Ben Meeker who is chief of our district. He has a deputy chief and supervisors and, in addition, administrative personnel among his staff of probation officers who actually do not supervise people. They are concerned with the administrative and related business problems. The 640 probation officers in the system currently supervise 49,023 people. And if you divide this up, we find an average supervision load—based on the total

strength of 640, with an average—of 76.2 people. And I think if you then try to determine where we are also concerned with the 2-minute type of rule in terms of time in order to devote to the people under supervision, we have a problem.

This is further complicated by the number of complete presentence investigations. I have a document with me which I will leave with the subcommittee which shows that a typical presentence report generally averages about nine to 10 pages. This is a complete case history of a defendant and our service of 640 officers last year did 27,558 of these investigations. This comes to an average of 43 investigations per year including the administrative people in the total of 640 officers.

Unfortunately, lately the investigations seem to take precedent over supervision because they are not only a tool for our service or for the court but also are a substantial part of the Bureau of Prison's classification material for convicted or committed offenders. Therefore, I say that the dilemma we face is somewhat puzzling to me as an administrator. I have worked on all levels. I was a police officer. I worked as a probation officer in Chicago, very deeply involved in the community. And I was one of the people in our office who worked with the Seven Step program at the Cook County jail (mentioned previously), which was a task in itself.

We in the probation service are ready to implement any sound program in terms of rehabilitation and we feel very strongly that the correctional arena is changing. We have seen the innovative programs that the Bureau of Prison has come up with and I think this changing arena is focusing on what we heard this morning, that is, inmates in a large degree will be treated in the community either as inmates or, hopefully, as was brought out by you earlier, sir, by means of pretrial diversion. We are in full harmony with this concept, because we think too many people get into the institutions before they actually have had good, proper screening. This, again, is where we come up with our problem of investigation.

Judge Van Dusen. Could I just interrupt there? You know we do have pretrial diversion now in the probation system. We have what is called the Brooklyn plan where a probation officer investigates and who reports to the judge and the judge can put him on preindictment probation before any indictment.

Senator Burdick. Before the acceptance of a plea?

Judge Van Dusen. Yes, before he is even indicted. And if he adjusts—you see, he is never indicted and he does not get any record at all. He might be put on probation for a year. He has to agree to this, of course.

Senator Burdick. Of course.

Judge Van Dusen. But he knows the statute of limitations is usually 5 years and he knows that indictment can come, and the U.S. attorney has to agree that he will not indict him for the year period or whatever period the judge determines and then the prosecution is just held back to see if the alleged offender will adjust. And this happens for people of various ages, juveniles, people over 30, and so on. It is what we call in the Federal system the Brooklyn plan, and it has been done informally for years. And we feel this district council idea is going to create tremendous problems for us and I hope that that bill will not go through without at least waiting until the Judicial Con-

ference of the United States can report to the Congress because it will completely dismember the probation service as it now operates. And we are under great pressure to get these presentence reports out quickly so that people can be sentenced with them and to speed up the criminal process, so we do not have this criticism that this man while awaiting sentence commits a crime.

Congress has urged us to expedite the criminal cases and the Federal judicial system has put in these rules under which each court has to work out a plan for trying to dispose of all cases within 90 days of indictment. Now, that means that after the trial we have to get this presentence report with these few probation officers and in about 30 days. Now, if you are going to have this district council with all of those people on it, who are going to have to work out the presentence report and the program, and submit it to the sentencing judge, we do not feel that we can possibly do this within the 90-day period. This is just one of the problems and we are studying the bill.

Senator BURDICK. Will the judicial conference——

Judge VAN DUSEN. It will report.

Senator BURDICK (continuing.) Take a position on pretrial diversion?

Judge VAN DUSEN. Oh, I think they will. I am sure they will approve it because the Brooklyn plan has been approved by the judicial conference and it is an enlargement of the Brooklyn plan.

Senator BURDICK. Well, now, that is interesting. Do we need legislation?

Judge VAN DUSEN. Well, I think we would like to have it.

Senator BURDICK. I see.

Judge VAN DUSEN. I think the judges would like to have it for their own protection, but we have taken the position, and the Department of Justice has always backed us on it, that the Brooklyn plan is legal but I think the Department of Justice would like to have legislation authorizing it too.

Senator BURDICK. I see.

Mr. JACKSON. Also, Mr. Chairman, the Brooklyn plan as presently conceived has been primarily for youthful offenders and we think we can see an expansion to the adult offender.

Senator BURDICK. Of course.

Mr. JACKSON. As we heard earlier this morning and I think Mr. Meeker can probably address himself to the success. I notice in his statement on deferred prosecution in the Northern District of Illinois that their success rate was 98 percent this last year and I think these are the kinds of statistics we should be concerned with. I do not like to talk about 10 times less than confinement and $4,300 to keep a man in jail. We would like to think what we can do to keep that person out of that jail. And as was brought out again adequately in testimony this morning, there is going to have to be a nucleus of offenders that are going to have to be contained and confined. But, we are talking about working with the person before he gets in the treadmill in the revolving doors and doing something to make him a viable member of the community, and reduce the social stigma. Again, we need a realistic concept not a bleeding heart concept, where we are going to cure all ills—because we are not able to do this. But, I think Mr. Ben Meeker can probably address himself to the deferred prosecution in the northern Illinois district.

Senator BURDICK. Mr. Meeker, tell us about it?

Mr. MEEKER. Well, it is, of course, not a new program. The Brooklyn plan was instituted over 20 years ago. I believe it started in Brooklyn and then it was picked up under an Attorney General's ruling—I think it was when Justice Tom Clark, while Attorney General in the Department of Justice recognized the validity of this primarily for juveniles—and the procedure was for the U.S. attorney to refer youthful cases to the probation office for a social investigation, and a recommendation as to whether a prosecution might be deferred, and the person supervised informally for a period of maybe 6 months or a year. And if that supervision period was satisfactory the charge was dismissed.

Well, in the last 8 or 10 years in the Northern District of Illinois, we have moved beyond the juvenile in the use of this procedure. We had a U.S. attorney some years ago who determined, under his powers to decline prosecution, that he did not have to restrict the use of the deferred prosecution to juveniles and he asked if we would be willing to handle youthful offenders. I think it was coincidental with the Youth Act coming in, because we all recognized that there was not a great deal of difference between many of the juveniles and the youthful offenders. Many times they are codefendants maybe on a car theft. So, we agreed that we would be glad to give this service to the U.S. Attorney's Office on adults as well as juveniles, and that group has expanded. Last year we had over 100 of these deferred prosecution cases and about half of them were over juvenile court age. Most of them I would say were under 30. But, of course, they are minor offenses.

Mr. Jackson mentions the relatively high rate of success. Many of them are high school or college age, young people who are just out of job and they get into minor Federal crimes, maybe stealing mail, or other kinds of minor offenses. But, we believe that this kind of diversion can be greatly expanded and I think our experience has shown that we can handle many older youths, and some adult offenders, particularly somewhere there was——

Senator BURDICK. Would you put any restriction on the type of offender that would not be eligible?

Mr. MEEKER. Well, I am generally opposed to mandatory limitations of discretion. I think rather I would like to see some fairly firm guidelines developed. I think the guidelines are not well developed at this point and it depends a good deal on the attitudes of the U.S. attorney.

Senator BURDICK. That is what I am asking right now.

Mr. MEEKER. We should have some guidelines and in these guidelines there probably should be some restrictions on types of offenders, maybe not by offense but certainly we are not going to suggest that we can work with all offenders under the deferred prosecution program. But, I am certain that a very significant percentage of offenders with whom we are not working, could be worked with on deferred probation, thus diverting them from the full criminal process.

Senator BURDICK. In your offices, you have a caseload now of more than 70 men per man, as you just testified. Have not the experts been recommending an average of 35 per men per man since about 1959 or thereabouts?

Mr. JACKSON. That is right.

Judge VAN DUSEN. That is correct. And we have been asking for more probation officers every year but we have gotten so far behind that this year the Federal Judiciary made a very thorough analysis of how many officers we really needed and came up with this figure of 348 additional officers.

Mr. JACKSON. And, again, Mr. Chairman I am going to come back to my inability to understand what is happening to us because this has not been a recent trend in terms of an upswing. For example, our increase over 1971, fiscal 1972 over 1971, in persons under supervision has been 14.6 percent. The increase of 1972 over 1970 has been 27 percent. So, this is not something that just recently developed. This has been a trend and this has been developing the 5 years I have been on the scene in Washington. The number of investigations, 1972 over 1971, has increased 17.4 percent, and the increase on investigations in 1972 over 1970 was 28.1 percent. So, this is not anything radically new, and I have statistics that go back and show the same type of report for increases in the past years and, as I say, this is our problem. And we are very, very strong advocates, as Mr. Meeker indicated, of differential treatment and if we have people who do not need surveillance, we do not want to give them surveillance.

However, we have to be realistic and understand that there are some offenders who will be released on probation or parole who need surveillance, and we have got to have the manpower to do the type of job that the Probation Act intends us to do.

Senator BURDICK. Well, gentlemen, we have 10 minutes left. Do you suppose you can telescope the balance of your presentation?

Judge VAN DUSEN. I think so.

Senator BURDICK. Or you can come back later.

Judge VAN DUSEN. Yes. I will be very brief.

I have said everything in this statement and I do not want to take time to just repeat what I have said here. But, I do think that this Federal Correctional Council, the Advisory Corrections Council, as it is now called in 18 U.S.C. 5002, could well be activated and in your S.2462 you provide a good system for doing that. And that is picked up in your staff bill, the same wording as in the staff bill, is it not, Mr. Meeker? (Referring to James G. Meeker, staff director.) So, if you passed the staff bill that would take care of that problem.

As you know, the Council is now provided for in 18 U.S.C. 5002 and it is not sufficiently broad based, and there is no requirement that it meet and there is no provision for staff. And the result is that we do not have any overall guidance which we would get if that section of the law were to be amended.

I do not think I have anything else to say that I have not covered except to emphasize that the motivation is the key thing. How do you motivate people? How to you change them? And as was brought out here this morning, that depends on each person, but the best person to do it is the probation officer, either in his capacity of supervising the man before he goes to jail, or if he is put on probation or after he is released when he is on parole. So, I think it is vitally important to have enough of these officers and have them well qualified and have people who can relate to others and have been trained. And we are fortunate in having standards, high standards, to require these proba-

tion and parole supervisors to be college graduates. And then we have the requirement of a certain number of years of social work school, or the equivalent, and I think we have a good system now, if we just had enough people.

I will turn now to Mr. Jackson and Mr. Meeker.

Senator BURDICK. I would like to ask you a question and have you include the answer in your statement.

Would any of the legislation we are considering today or in this committee affect the supervising officers in their work in the probation system?

Mr. JACKSON. Yes, sir; it would. As I said in my statement, and I will just sort of highlight that in terms of expediting the hearing, we will be required in some cases to supervise more people. And if, in terms of the confinement rate the parole terms are lessened, that is going to provide more people on the streets for us to supervise in our role as Federal probation officers. If we look at the situation now, I think there has been a 2,000 increase in the last 2 years in the prison population and we predict an additional thousand next year, and again, we sort of have run behind. We never—we are always playing catch-up in our business, because if the prosecutors get zealous and they commit more people——

Senator BURDICK. There is nothing here that an Appropriation Committee could not correct, is there?

Mr. JACKSON. No, sir. I do not think so. Again, in my reference to futuristics, I think that we have been at the tail of the dog and people could predict what impact the committed offenders would have in terms of supervision needs in the community. And I do not think this has been the case. That might be our shortcoming. It may be our inability to properly express the problem when we go before Congress.

Judge VAN DUSEN. What is your comment on the district councils and circuit councils, that bill? That is 3185.

Mr. JACKSON. Well, again, I think we are really sort of constituted in this mode at the present time, and we are tasked at the Administrative Office level with administering to the requirements of the Federal Probation Service and in a sense we do have this very immense regionalization throughout the United States. And I think that would be somewhat of a magnification of the circuit and the district-type board at the present time. It works quite well. We have worked very, very closely with the Bureau of Prisons and the Board of Parole though not necessarily obligated to any cohesive statute or anything. We are, after all, a part of the same rehabilitative team, and I think that this mutual cooperation has worked very, very effectively in the past.

The only question that I had as I looked at the bill is the advisability of having this on a strict legal basis. You might have some district board, for example, in a region that has very few committed offenders. Conversely, if you have one for California with their institutions or ones that are the drawing boards at the Federal Bureau of Prisons, you know, then we are going to have a large amount.

Senator BURDICK. We can adjust this to a caseload and not territory?

Mr. JACKSON. Yes, sir. I think that would be true and a very decided factor. But, to answer your original question, we would feel the impact on the Federal Probation Service as presently constituted because we would be obligated to supervise an additional amount of people

released from the institutions particularly with the recent upsurge in offenders.

Senator BURDICK. That problem could be removed by the addition of personnel, could it not?

Mr. JACKSON. I would think so, yes.

Senator BURDICK. Mr. Meeker?

Mr. MEEKER. Mr. Chairman, may I comment on this? I think the import of S. 3185, the bill which would propose the District Disposition Boards would dramatically affect our operation, because under the provisions of that bill, S. 3185, the entire role of the Federal Parole Board and the Federal Probation Service would be reconstituted under a new structure. I cannot anticipate just what this would mean but certainly it would change entirely the present operation of the Federal Probation and Parole Services. I tried to outline this in my testimony, which is detailed and presented in four different exhibits. In the first exhibit I tried to show that many of the goals have been achieved. The goals of this bill, S. 3185, are excellent in moving to improve the coordination and quality of services, but under the traditions of the Federal Probation and Parole Service, we have already achieved a high degree of coordination, particularly at the local level.

In my Chicago district, as I have pointed out in my written testimony, we have housed in our Probation Office representatives of the Bureau of Prison who are responsible for making prisoner confinement designations, in conducting jail inspections, and in consulting with us on the individual cases. We do a great deal of community laison work for the Bureau of Prisons and, of course, as you know we do both probation and parole. I think that the goals that have been set here for improvement and coordination relate very much to staff shortages as has been said. I have a staff of 20 field officers attempting to supervise 1,800 cases, plus a great volume of presentence investigation work, as well as liasion work for the Bureau of Prisons. All of these services we can perform with sufficient staff additions. We are now even called upon to help assist in pretrial negotiations.

I think we can accomplish much in this area with adequate staff, including, as you have mentioned, increased use of deferred prosecution. So, I personally see that this bill that you propose for establishing the Parole Commission and regionalizing the Parole Board would take care of many of the problems as far as communications are concerned, and improve the quality of the parole. But I have many reservations about this other bill, S. 3185, which would set up an entirely new structure.

Senator BURDICK. You are referring to which, the bill that has not yet been introduced which would be called the committee bill; is that the one you are referring to?

Mr. MEEKER. Yes, the Parole Commission bill is the one that I think has great merit. It has not as yet——

Senator BURDICK. We just wanted to get the bill straight here.

Mr. MEEKER. Yes. The other one is S. 3185, about which I have many reservations.

Judge VAN DUSEN. In other words, I think Mr. Meeker and I would greatly prefer the Parole Commission bill, not S. 3185.

Mr. JACKSON. Again, Senator Burdick, I think I would feel the same thing, of course, because 3185 would probably put me out of a job, so I think out of economic self-survival, I would have to go along.

Senator BURDICK. You have got a conflict of interests.

Well, one last question. I have to bring this hearing to a close by necessity, and this is a general question to you, Judge, or to either of the parole gentlemen, probation gentlemen over here.

What can we do to enlighten the community in this area more than we have?

Judge VAN DUSEN. Well, that is a very difficult question and it certainly is one of the greatest needs to enlighten the community and educate them to the needs for probation and parole, and the answer is not just giving big jail terms. I think that all of us who are in the field have to take every opportunity we can to go out and talk when we are asked to, when we are permitted to, to groups and educate them. And I have tried to do this. I have tried to do this. I have talked to personnel people in Philadelphia 5 years ago and I had asked for the privilege of going with our chief probation officers there and telling them how many jobs we needed for well-qualified people, and they would not even listen to us. I mean, they would listen, let you talk for 5 minutes but they would not volunteer to cooperate. Now, we are getting more cooperation but it is a very hard road and somebody like Johnny Cash is a lot more acceptable to the public than judges and probation officers. But, I think everybody in the correctional field has to do more to tell their story.

Wayne, do you want to add anything?

Mr. JACKSON. Yes, sir.

Senator Burdick, I do not have the final document of the draft here but I would like to make arrangements with you, if I could, to show you this document and also an associated group of slides and tape recordings which we were privileged to work with the chamber of commerce on. They, of course, harkening to what Senator Mathias said earlier about orientation to business, are deeply engaged in the business community of the United States, are finally beginning to see the application of a sound correctional policy, and they have come out with this publication. And they have gone beyond what Judge Van Dusen and maybe what you said before in terms of manpower. We find our people so busy preparing investigations for the court that, unfortunately, the person under supervision comes second. We do not have as much opportunity as we should to go out and make presentations to local groups. Hopefully, this publication will enable the probation officer to have an audiovisual presentation that he can utilize in making presentations before local church groups, school groups, or what have you. I think you will find it very informative and very interesting.

Senator BURDICK. Certainly we would like to see it.

Mr. JACKSON. Mr. Carlson and Mr. Peterson of the Department of Justice were at the meeting last Friday when this was unveiled, so it is a brandnew thing. I have got the pilot presentation in my office and if we can work it out, I am sure you would be interested in seeing it, and see what application it would have in terms of our probation officers' using it as a tool to go out in the community and make the people aware of the practical aspects of the problem that we have been talking about.

Thank you.

Senator BURDICK. Mr. Meeker, what is your idea in 15 seconds?

Mr. MEEKER. Well, I think one of the most effective public information services, which is a tremendous thing, are hearings such as this and I am very happy to see you have covered such a broad scope. I think you focus nationwide attention on the fact that incarceration is not the answer. You see the public we have had to deal with over the years has tended to downgrade probation, parole, and community services. But, now, the facts are coming to light and I think your committee is uncovering many of them to show that the public's dependence on incarceration has been misguided over the years. We have tried to say this but it has been hidden behind the public's fears primarily because of the sensationalism, as was said earlier by Mr. Cash, when someone violates they get all of the publicity. The doctor mentioned it with the mental patients, and the same thing is true in our field. The majority of the offenders with whom we work, if you look at the total count, from the diversion groups right on through, do succeed in community treatment. A higher percentage of this group succeeds than among those who are incarcerated. If we could have a public information service at the national level to discount many of these sensational stories which overemphasize the failures we have in the system, and could concentrate more on the quality of the successes, this would be a most important development.

Thank you.

(The prepared statements of Judge Van Dusen, Mr. Meeker, and Mr. Jackson follow:)

STATEMENT OF FRANCIS L. VAN DUSEN, U.S. CIRCUIT JUDGE

Having been associated with the Federal Corrections System for over seven of the last ten years as a member of the Committee on Administration of the Probation System, Judicial Conference of the United States, and as a federal judge concerned with the safety of the community and the problems of offenders, who will become recidivists without adequate supervision and training, I appreciate the opportunity of making this brief statement as the result of the invitation of your Chairman, received July 13. I emphasize that I am speaking solely for myself and not for the above-mentioned Committee of the Judicial Conference of the United States, which will not have an opportunity to consider any of the above bills until its next meeting on August 9–10, after which it will submit its report to such Judicial Conference. The House of Representatives has requested the views of the Judicial Conference of the United States on H.R. 12908 (S. 2383) and H.R. 13293 (S. 3185, now amended by Amendment 1210), and the Conference will respond presumably after its October 1972 meeting which will consider the report of the above Committee made as the result of its deliberations next month.[1]

S. 2383 (H.R. 12, 908)

As a matter of policy, I favor giving those authorities involved in the Federal Correctional System (Courts, Parole Board and Bureau of Prisons) reasonable flexibility to act based on the facts of each particular case. Therefore, I approve Sections 1 and 3 of this Bill. I suggest insertion, in line 10 on page 4, after "made," the words "if feasible," since the minimum term might be approximately 90 days. I suggest these amendments to Section 2:

A. Eliminate the words "that he has made positive efforts toward his own rehabilitation." (A prisoner might be too emotionally upset to make "positive efforts toward his own rehabilitation" and yet continued confinement could only create a risk of making him dangerous.)

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[1] If the comments of the Judicial Conference of the United States are desired on any legislation pending in Congress, a request for such comments is normally submitted to the Director of the Administrative Office of the U.S. Courts, who forwards such requests to the appropriate committee of the Judicial Conference so that such Committee may make a report on the legislation to the next meeting of the Judicial Conference.

B. Insert the present third and fourth paragraphs of 18 U.S.C. § 4203(a) between lines 22 and 23 on page 2. (I do not understand why a parolee or a mandatory releasee should not have the benefit of living in "a residential community center" if the Board of Parole so requires.)

S. 2462

I favor this Bill mandating quarterly meetings of the Advisory Corrections Council, providing for staff assistance, etc. However, I suggest (1) deletion of these words in lines 2 and 3 on page 3 (subsection (c)): "of the Federal agencies, private industries, labor and local jurisdictions" and (2) insertion of these words after "crime" in line 4 on that page: "after considering such policies of the federal agencies, private industry, and labor and local jurisdictions." The present language might frustrate any recommendations by the Board because it was contended that they did not "assure" coordination and integration of policies of one of the named groups (for example, private industry or labor). It would seem desirable to require recommendations that assure coordination and integration of the policies after consideration of the policies of the named entities.

S. 2955

I suggest that the quoted language in Section 1 be amended to read as follows: "The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve, provided, however, that the Board of Parole shall have the discretion, when the circumstances warrant it, to diminish the period which such prisoner was sentenced to serve by all, or part of, the amount of time he spent on parole prior to his retaking."

This language is consistent with the policy of reasonable flexibility stated in the first sentence under S. 2383 above. If the Parole Board is arbitrary in denying all credit for time on parole, the federal courts can give relief under the due process clause of the Fifth Amendment and the cruel and unusual punishment clause of the Eighth Amendment in extreme cases.[2] The above suggested wording can be reviewed again by your Subcommittee after there has been a chance to evaluate operation under its terms.

S. 3674

I prefer the language in S. 2955 to the language in this Bill. However, the change suggested above under S. 2955 seems to me to be the most desirable language. This is a policy matter which should be determined by Congress.

S. 3185 (H.R. 13293), as Amended by Amendment 1210

I suggest that this Bill should not be adopted at this time. The Bill will be submitted to the Committee on Administration of the Probation System at its meeting to be held next month, and that Committee will submit its report to the Judicial Conference of the United States at its meeting on October 26–27, 1972. Thereafter that Conference will submit its recommendations on this Bill to Congress.

This Bill provides for a drastic change in the present sentencing and corrections process. Recognizing that there is room for improvement in our federal corrections system, I believe most qualified foreign and domestic experts in the corrections field would state that our federal system is one of the best in this country. If it is to be changed, I would recommend that a plan be worked out by a Commission such as The National Commission on Reform of Federal Criminal Laws (P.L. 89–801). This suggestion is consistent with the views of Mr. Merrill Smith, former Chief of the Division of Probation of the Administrative Office (see pages 10–11 of attached Statement of Merrill A. Smith, Chief of Probation Division of the Adminstratve Office of the U.S. Courts before Subcommittee No. 3 of the House Judiciary Committee dated April 14, 1972), which includes this language:

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[2] See last sentence on page 13 of Report of Proceedings of Judicial Conference of the United States, April 6–7, 1972, reading: "The Conference agreed that if the Constitutional rights of a parolee are infringed, he has an adequate remedy under existing provisions of the United States Code."

". . . [T]he fundamental issue . . . [is] whether a better way can be devised to organize probation services, prison services, parole and other aftercare services in the federal system to realize their full potential. The need remains for a comprehensive study to be made, and if its findings are to be acceptable to all concerned, the inquiry must be thoroughly dispassionate and objective.

"It occurs to me that rather than creating a new permanent ongoing entity to set correctional standards and be the correctional watchdog there might be merit in considering the establishment of a relatively shortlived commission comprised of representation selected by each of the three branches of the government to assess all aspects of the federal correctional system and present to Congress, the President, and the Judiciary a comprehensive design for the reorganization of all correctional activities in the manner most likely to insure the fulfillment of their objectives."

As stated by Mr. Smith, many of those with experience in the Federal Corrections Systems believe that any reorganization of that system should unite probation, prison and parole functions under a Federal Correctional Agency or Commission independent of the Department of Justice, the legislature, and the courts. I understand Wisconsin has such a system. The commission or agency members could be appointed by the President with the advice and consent of the Senate. See S. 3065 and H.R. 13,549 of 89th Congress, 2d Session, creating a United States Corrections Service, which was disapproved by the American Bar Association and the federal judiciary, since it was created within the Department of Justice and not independent of the prosecutor.

Until such a reorganization is accomplished, the best agencies to establish guidelines and standards of the type contemplated by this Bill are the Advisory Corrections Council (18 U.S.C. § 5002), which can be reactivated by passage of S. 2462, the Federal Judicial Center, and the National Institute of Criminal Justice of the LEAA, consulting with the Bureau of Prisons, Board of Parole, and the Probation Division of the Administrative Office, as well as with others. The following documents, some relatively recent, contain some of the standards contemplated by the perceptive drafters of this Bill:

A. Minimum Qualification Standards for the Appointment of Probation Officers, "requiring that the appointee possess a college degree and that he have either two years of experience in personnel work for the welfare of others or two years of specialized graduate training or specific combinations of experience and advance training." See Standards, as reaffirmed by the Judicial Conference of the United States in the Report of its proceedings of September 1968 (page 61).

B. Minimum Standards for Criminal Justice of the American Bar Association, as follows:

1. Standards Relating To Probation (1970).
2. Standards Relating To Sentencing Alternatives and Procedures (1968).
3. Standards Relating to Appellate Review of Sentences (1968).
4. Standards Relating to Pre-Trial Release (1968).
5. Standards Relating to Post Conviction Remedies.
6. Standards Relating to Providing Defense Services (1968).

SUPPLEMENTAL STATEMENT RECEIVED FROM MR. MEEKER

Since parole has been an executive function in the federal system, it is not appropriate for a judge to pass on the policy considerations involved in amending the parole system. The views of the Chairman of the Board of Parole and the Director of the Bureau of Prisons, who are the most important officials of the Executive Department dealing with federal corrections, should be considered carefully and have the most weight with your Committee in considering this legislation. From my own experience, I can see no objection to this legislation, but the Chairman of the Board of Parole would be in a far better position to comment on it. I have a very high opinion of both the Chairman of the Board of Parole and the Director of the Bureau of Prisons, who have been most cooperative in working with the judiciary for improved operation of the Federal Correctional System. Since Chairman Sigler has only recently (July 1) undertaken the important and time-consuming job of Chairman of the Board of Parole, and at the same time holds the important position of Chairman of the American Correctional Association, it would seem wise to have a deferred effective date for the reorganization contemplated by the amendments to Chapters 311 (18 U.S.C. 4201 ff.) and 402.

C. Part III of Model Penal Code (A.L.I. 1962).

The greatest need of federal corrections at the moment is for 348 additional probation officers to carry on the greatly increased workload described in the attached April 14, 1972, Statement of Mr. Smith. If your Subcommittee can persuade the Senate conferees to stand firm on the Senate's position that at least 236 additional probation officers should be authorized for fiscal 1973 under H.R. 14,989 (see Congressional Record—Senate, page S. 9530, June 15, 1972, last column containing statement by Senator Scott), it will be meeting the most urgent present need of the Federal Corrections System. We are most fortunate in having built up an excellent system of following up the offender from the time of his arrest until his eventual release after termination of parole or probation with a minimum of duplication. What is needed are additional qualified probation officers to do the jobs which the Board of Parole, the Bureau of Prisons, and the Federal Probation System have found to be necessary. The personnel needs of the Probation System, which services the Bureau and the Board of Parole, as well as those placed on probation, have not been met. I enclose an extract from a release by the Judicial Conference of the United States on this subject which was issued at the end of last October.

Respectfully submitted,

FRANCIS L. VANDUSEN,
U.S. Circuit Judge.

I have the following specific comments:

A. Insert in revised Section 4203(c)(3), appearing at the top half of page 6, before the word "upon," the words "pursuant to the Federal Rules of Criminal Procedure or".

"Section 32 of the Federal Rules of Criminal Procedure presently provides that certain parts of the pre-sentence report shall not be disclosed to the defendant (for example, language of such rule is now in process of adoption providing that the personal recommendation of the probation officer to the sentencing judge shall not be disclosed to the defendant since such recommendation might create bitterness in the defendant, making it difficult for him to cooperate with his probation officer if the recommendation was not followed by the sentencing judge and the defendant was placed on probation). Since Congress approves by failing to veto all amendments to the Federal Rules of Criminal Procedure, these limitations should also apply to the pre-sentence report in the files of the Parole Board and in the files of the Bureau of Prisons."

B. Section 4207(b)(6) seems unnecessary since the magistrate will know very little about (1) the background of the parolee and (2) the considerations which formed the basis of his parole plan.

C. I suggest the last sentence of § 4207(c) be reworded to permit the magistrate to revoke bail at any time that "in his opinion continued release will not reasonably assure the appearance of such person in the event" parole is revoked.

D. With respect to Section 8, page 11, I have the same comment on 18 U.S.C. § 5002(c) as expressed above at pages 2 and 3 under S. 2462.

STATEMENT OF MERRILL A. SMITH, CHIEF OF THE DIVISION OF PROBATION, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman and members of the committee, I am Merrill A. Smith, chief of the Division of Probation, Administrative Office of the United States Courts. By way of personal background the Committee may be interested to know that I entered the federal probation system as a United States probation officer in 1941, served 13 years in that capacity, came to the Probation Division as assistant chief in 1954, and have been chief of the Division since 1966.

The Division of Probation serves as the headquarters office of the federal probation system, although the system itself is basically a decentralized one with the considerable local autonomy. Probation officers are appointed by the judges of the district courts. Qualification standards for appointment, established by the Judicial Conference of the United States, are enforced by the Division. In this connection no one enters the service as a probation officer without the minimum qualifications of a bachelor's degree plus either two years of qualifying experience or a master's degree based on two years of graduate work. At present approximately one-third of the officers hold master's degrees. Among recent appointees nearly one-half have held graduate degrees on appointment.

Probation services are provided through 185 probation offices situated in 90 judicial districts in the United States, the District of Columbia, and Puerto Rico. The present authorized strength is 640 officers and 462 clerical personnel. The Division of Probation, comprised of six professional and three clerical per-

sons, is tasked with coordinating the work of the system, promoting its efficient operation, and enforcing the probation laws.

Historically the probation system began its work wholly oriented to providing probation services. As described by Mr. Chief Justice Taft its function was seen as "giving to young and new offenders of law the chance to reform and to escape the contaminating influence of association with hardened or veteran criminals. . . ." "Probation," Mr. Chief Justice Taft added, "is the attempted saving of man who has taken one wrong step and whom the judge thinks to be a brand to be plunked from the burning at the time of the imposition of the sentence."

Five years after the probation system was established, however, the Act was amended to place upon probation officers the responsibility also of supervising persons paroled from the federal prisons. Thus since 1930 the probation officers have served also as parole officers. In all matters relating to probation the officers are responsible primarily to the courts they serve. In parole matters their direction comes from the United States Board of Parole.

Although the probation officers serve both the judicial and executive establishments the serving of two masters has produced remarkably little conflict. This is the result of a high degree of cooperation and coordination at the Washington level between the United States Board of Parole, the Bureau of Prisons, and the Division of Probation. Such problems as have arisen can be traced almost without exception to the lack of sufficient manpower in the field offices to meet all the demands placed upon the officers.

At present there is pending in the Congress the fiscal 1973 appropriation estimate for the probation system. It sets out the need for 348 officer positions, 30 probation officer assistant positions, and 196 clerical positions in addition to those now authorized. This represents a proposed increase of approximately $7 million.

At the end of fiscal year 1971 the probation system had under its superivsion 42,549 persons. By December 31, 1971, the number had risen to 45,177. In the 30-month period from June 30, 1969, to December 31, 1971, the number of cases under supervision rose 22 percent. There is attached as Exhibit 1 a table, "Probation Workload Data—Fiscal Years 1954–72," which provides additional detail on cases supervised as well as investigative work performed by the probation officers.

At present there are approximately 66,000 convicted offenders under the jurisdiction of the federal correctional system. The probation system is responsible for more than two-thirds of these as probationers, parolees, and mandatory releases under supervision in the community.

The fact is that the largest proportion of all offenders are not confined. Of all those sentenced to prison, 98 percent return either by parole or as the statutes otherwise require. The central responsibility of the probation system is to provide control, guidance, and assistance to released offenders to prevent their return to crime and to make safe our homes and streets.

However, the heavy demands of the courts, the Board of Parole, and the Bureau of Prisons for necessary investigative assistance have converted the probation service into what is now largely an investigative operation. To a considerable degree this has diminished the system's ability to perform its central function that of giving released offenders the close supervision and other attention that they need and ought to have.

The probation system is faced with the immediate need for a 50 percent increase in strength as a first step toward assuring such supervision of the 45,000 federal offenders now in community probation and parole programs, while at the same time continuing to provide essential investigative services for the courts, the Bureau of Prisons, and the Board of Parole.

Work measurements that sufficed a decade and a half ago no longer are valid. Realistic evaluation of current personnel requirements must take into account the heavy investigative burden as well as the increasing number of persons on probation and parole.

The table attached as Exhibit 2 reflects in traditional style the average number of cases per officer. Exhibit 3 sets out the average number of supervision cases per officer after deducting the amount of officer time required to perform the presentence investigation function for the courts. It does not take into account the remainder of the investigative work which in fiscal 1971 resulted in the preparation of 35,859 additional reports. Even so, as shown in Exhibit 3, the number of supervision cases projected for fiscal 1973 is 68 per officer.

Valid appraisal of personnel needs must also take cognizance of changes in the nature and complexity of the probation officers' task and in the offender popula-

tion with whom they work. The personal safety of probation officers is of growing concern. Officers in larger cities must investigate and supervise persons living in areas where it is no longer safe for an officer to work alone. The present level of tension and hostility toward anyone associated with law enforcement has created new staffing problems. A survey of the caseload in one city shows that 40 percent of the probationers and parolees live in areas where an officer cannot work safely by himself. Sufficient staff must be provided to send officers in pairs into such localities.

The supervision of parole and mandatory release cases by the probation system is required by statute and authority delegated to the Board of Parole. In fiscal year 1971 the Board completed formulation of specific standards for supervision. They spell out what the Board will expect from probation officers as quickly as sufficient staff can be acquired.

The Board's guidelines establish a system of case classification prescribing the minimum number of personal contacts between the officer and the releasee according to the degree of hazard present and the degree of supervision needed. A survey of the caseload reveals that of 11,000 parolees and mandatory releasees 5,500 to 6,000 will be classified as requiring maximum supervision and close surveillance. The Board of Parole urges that these cases be assigned on the basis of not more than 25 cases per officer thus requiring the full time of 220 officers or more for the maximum supervision cases alone.

Further the probation officers' responsibilities have been increased by the impact of new programs, all required by statute. The Narcotic Addict Rehabilitation Act of 1966 established a comprehensive treatment program for narcotic addicts both in the institution and in the community. Probation officers provide community supervision for those persons sentenced under Title II of the Act. As of June 30, 1971, 408 persons had been released to aftercare, a program combining intensive supervision by the probation officer, counseling in a suitable clinic, and regular testing for possible relapse to narcotics use. The Bureau of Prisons and the Board of Parole have recommended that a probation officer supervise no more than 25 of these cases. At the close of fiscal year 1971 the probation system had 350 cases under this form of intensive aftercare supervision. An additional 375 persons were confined in Bureau of Prisons NARA Treatment facilities for examination or treatment and will be released to the supervision of probation officers in due course.

Recent amendments to the probation and parole statutes, P.L. 91–492, provide that persons on probation may be required to participate in a program of or reside in a community treatment center as a condition of probation. Also, persons on parole or mandatory release may be required to participate in a program or reside in a community treatment center as a condition of their release. The probation officer, as the authorized representative of the Federal court and the Board of Parole, is required to involve himself in arrangements with a community treatment center staff for the placement, overview of progress and discharge of any such probationers or releasees. As of December 31, 1971, 151 probationers, parolees, or mandatory releasees had been referred by probation officers for placement and 132 had been accepted in the pogram.

Public Law 91–447 amended the Criminal Justice Act to provide for the appointment of counsel to represent alleged parole violators in parole violation hearings. Under rules adopted by the Board of Parole, probation officers are required to interview each alleged parole violator to determine if he wants to request the court to appoint an attorney to represent him at his hearing.

The Organized Crime Act, P.L. 91–452, and the Comprehensive Drug Abuse Prevention and Control Act, P.L. 91–513, both provide for special sentencing hearings with emphasis on the probation officer's presentence investigation report. In addition, the Drug Abuse Act provides for probation and requires a period of parole for an increasing number of persons who would have otherwise been denied these opportunities under previous drug laws. In view of the dramatic increase in filings of narcotic drug cases, a 33 percent increase in 1971 over 1970, the impact of probation officers will be substantial.

In addition to the social values of probation its use whenever feasible is also financially advantageous. In Federal institutions the per capita cost in fiscal 1971 was $4,315 per year while for probation the cost was $412. Consistently for many years Federal probation costs have been approximately one-tenth those of imprisonment.

As pointed out earlier, the appropriation estimate for fiscal 1973 is a first step in achieving the quality of probation and parole performance that should be attained. The probation system, however, should continue to move toward full compliance with the standards set by the President's Commission on Law Enforcement and Administration of Justice. This will require a further infusion of professional personnel to reduce the number of cases supervised to an average of 35 per officer.

Whether it wears two hats or one the probation system should be enabled to become more fully what it was intended to be—the Federal agency in the community whose purpose and function is to draw offenders out of crime and into useful citizenship. Under present workloads the system's capacity to achieve its purpose is greatly reduced.

The problem seems to present two alternatives. One would be to set up and fully staff an independent parole service thus enabling the probation system to devote its full resources to intensive work with offenders under the jurisdiction of the courts. The other alternative would be to provide the probation system with sufficient manpower to handle both tasks. The second course generally is regarded as the better because of obvious economies, because the functions are similar, because it would not further fragment correctional activities, and because it provides a greater degree of continuity in the handling of offenders from the point of sentence through ultimate discharge.

One of the bills before this Committee, H.R. 13293, would provide for the establishment of a Federal Correctional Advisory Council to set guidelines and oversee both federal and state correctional machinery. This suggests to me another area this Committee may wish to address.

In the middle of the last decade quite a stir was created by a series of proposals that would have removed the federal probation system from the judiciary and would have established it in the Department of Justice. At best the proposals were unfortunate. None was based on any comprehensive study or inquiry into the problems or needs of the federal correctional services. To the vast majority of judges the notion that the probation officer, one of whos primary duties is the conducting of unbiased presentence investigations, should be placed under the jurisdiction and control of the nation's chief prosecutor was wholly unacceptable.

The introduction of the proposals generated considerable antagonism, distrust and suspicion, and produced an instant polarization of views, a great deal of heat, and little if any progress.

The Result of all this was a total eclipse of the fundamental issue, i.e. whether a better way can be devised to organize probation services, prison services, parole and other aftercare services in the federal system to realize their full potential. The need remains for a comprehensive study to be made, and if its findings are to be acceptable to all concerned, the inquiry must be thoroughly dispassionate and objective.

It occurs to me that rather than creating a new permanent ongoing entity to set correctional standards and be the correctional watchdog there might be merit in considering the establishment of a relatively shortlived commission comprised of representation selected by each of the three branches of the government to assess all aspects of the federal correctional system and present to the Congress, the President, and the Judiciary a comprehensive design for the reorganization of all correctional activities in the manner most likely to insure the fulfillment of their objectives.

Mr. Chairman and members of the Committee, this concludes my formal remarks. I thank you for affording me the opportunity to be heard and I shall be happy to answer any questions as best I can.

EXHIBIT 1

PROBATION WORKLOAD DATA—FISCAL YEARS 1954–72

Fiscal year	Criminal filings	Criminal convictions	Probations received	Others received	Probation supervision reports 1 and 2	Other investigation reports	Persons under supervision	Probationers under supervision	Others under supervision	Probation officers	Average percent under supervision	Average probation supervision (1 and 2) reports	Average other investigation reports
1954	41,808	[1] 24,031	9,707	----------	19,811	[2] 8,538	29,472	21,915	7,557	316	94	63	27
1955	35,310	[1] 25,351	10,098	----------	20,872	8,856	30,074	22,427	7,647	316	95	66	28
1956	28,739	[1] 25,420	11,491	7,784	22,365	8,146	31,385	23,627	7,758	387	81	58	21
1957	28,120	[1] 25,559	12,045	8,174	23,168	8,249	33,133	25,216	7,917	481	69	48	17
1958	28,897	[1] 25,993	12,329	7,851	24,508	8,108	33,781	26,131	7,650	487	69	42	17
1959	28,729	[1] 26,100	12,350	7,701	23,992	6,984	34,248	26,583	7,665	508	67	47	14
1960	28,137	[1] 26,728	12,021	7,240	23,662	6,507	34,343	26,736	7,607	506	68	48	13
1961	28,460	[1] 28,625	11,872	6,819	24,357	6,725	35,065	26,360	8,705	[3] 504	69	48	13
1962	29,274	29,499	12,562	9,248	24,954	6,913	36,663	27,136	9,527	520	70	48	13
1963	29,858	30,719	13,633	9,311	26,226	6,860	38,551	28,437	10,114	520	74	50	13
1964	29,944	30,285	13,457	10,180	26,098	7,184	39,600	28,738	10,862	520	76	51	14
1965	31,569	29,738	12,651	9,650	24,897	6,828	39,332	28,282	11,050	520	76	48	13
1966	29,729	28,226	12,264	9,785	23,841	6,947	38,659	27,251	11,408	550	70	43	13
1967	30,534	27,073	11,151	10,020	22,721	7,214	37,767	25,898	11,869	582	65	39	12
1968	30,714	27,052	11,885	8,873	[4] 22,902	[4] 36,211	36,785	25,789	10,996	612	60	36	59
1969	33,585	28,164	12,258	8,676	22,690	36,031	36,987	26,033	10,954	612	60	37	59
1970	38,102	29,859	13,579	8,242	23,768	35,265	38,409	27,444	10,965	612	63	39	58
1971	41,290	33,604	15,416	9,161	25,638	35,859	42,549	30,608	11,941	612	70	42	59
1971 (6 mos.)					11,529	17,228	40,039	28,191	11,848	612	65	19	28
1972 (6 mos.)					13,119	18,106	45,177	31,854	13,323	640	71	21	28

[1] Excludes District of Columbia.
[2] Preparole investigations.
[3] Drop 2 for Chicago Training Center.
[4] New reporting system.

EXHIBIT 2

TABLE I

	Number of probation officer positions [1]	Supervision cases	Average per officer
Fiscal year—			
1961	504	35,065	69
1962	520	36,663	70
1963	520	38,551	74
1964	520	39,600	76
1965	520	39,332	76
1966	550	38,659	70
1967	582	37,767	65
1968	612	36,785	60
1969	612	36,987	60
1970	612	38,409	63
1971	612	42,549	70
1972 [2]	640	47,200	74
1973 [2]	988	52,500	53

[1] Exclusive of 2 officers engaged in the operation of the Chicago Training Center through fiscal year 1971. Positions transferred to Federal Judicial Center in fiscal year 1972.
[2] Estimate.

EXHIBIT 3

TABLE II

	Probation officer positions [1]	Presentence investigations	Officers required for PSI [2]	Officers available for supervision	Supervision cases	Average supervision cases per officer [3]
Fiscal year:						
1961	504	24,357	189	315	35,065	111
1962	520	24,954	194	326	36,663	112
1963	520	26,226	204	316	38,551	122
1964	520	26,098	203	317	39,600	124
1965	520	24,897	194	326	39,332	121
1966	550	23,919	186	364	38,659	106
1967	582	22,721	177	405	37,767	93
1968	612	21,399	167	445	36,785	83
1969	612	20,936	163	449	36,987	82
1970	612	21,509	167	445	38,409	86
5971	612	23,479	183	429	42,549	99
Estimate:						
1972	640	25,800	201	439	47,200	108
1973	988	28,400	221	767	52,500	68

[1] Exclusive of two officers engaged in the operation of the Chicago Training Center through fiscal year 1971. Positions transferred to Federal Judicial Center in fiscal year 1972.
[2] Computed at 14 hours per presentence investigation, based on field experience and time study in Federal probation system ("The Effectiveness of a Prison and Parole System" by Daniel Glaser; Bobbs-Merrill Co., 1964).
[3] Plus all investigative work other than presentence investigations (40 investigations per officer in fiscal year 1971).

Testimony of Ben S. Meeker, Chief, U.S. Probation Officer, U.S. District Court, Northern District of Illinois

Mr. Chairman, I wish to thank you and members of your Committee for inviting me to testify on matters relating to the Federal Probation and Parole Service generally, and specifically on certain bills relating to parole. I have been active in the field of corrections for nearly 30 years and for the past 22 years have been in charge of the Federal Probation Office in Chicago. At no time during this more than quarter of a century has Congress shown so vital an interest in the field of corrections as I have noted during this past two years. This is most encouraging to those of us in public service who have striven to support and contribute to sound correctional goals. The work of your Committee toward the improvement of correctional services throughout the nation is particularly noteworthy.

Before commenting on the specific proposals which have been referred to me for evaluation, I would like to call your attention to Supplement No. I of the materials I have included for your Committee's consideration. I that supplement, I have attempted to show that the major problems confronting the federal

correctional administrators do not flow from organizational deficiencies so much as from manpower shortages. Considering the scope and complexity of demands placed upon the Federal Probation Service and the Federal Parole Board, I believe the public has received a high degree of protection and efficient service. Excellent statistics kept by the Administrative Office of the U.S. Courts show that year after year approximately 80 per cent of persons placed on probation by Federal district courts complete the probation period without revocation, and approximately 65 per cent of federal parolees released to our supervision by the Federal Parole Board complete their paroles without major violations. However, this excellent record will be jeopardized unless improvements both in organizational and manpower deficiencies are remedied. This, I know, to be the goal of your Committee.

Your Chairman has asked me to comment on Senate Bills S. 2383, S. 2462, S. 2955, S. 3185, and S. 3674, and the preliminary draft of a bill to establish an angency within the Department of Justice to be known as the *Parole Commission*. This latter bill has much to commend it and I will comment first on this proposal.

Parole Commission bill

In our work with parolees, as you know, my office serves as an agency of the Federal Parole Board. Since I received this bill but a short time ago, and have not had an opportunity to discuss it in depth with the Chairman of the U.S. Board of Parole, my comments will be somewhat general.

I am particularly impressed by the proposal for creating a Parole Commission and regionalizing the functions of the Federal Parole Board because this proposal builds on the solid foundation of experience gained over the years by the Parole Board and our field offices. Rather than setting up a new admiinstrative structure to which would be transferred various agencies of the present Federal correctional system as suggested in S. 3185, I believe an advisory council and an expansion and modification of the current operation of the Federal Parole Board and its services, plus an expansion of the field staff of the Federal Probation System would solve most of the problems which have been reported to this and other Congressional committees. In my testimony before Subcommittee #3 of the House in March, chaired by Congressman Kastenmeier, I suggested the possibility of expanding the Federal Parole Board and regionalizing certain of their functions. It appears to me that the spirit and content of much of your proposal coincides with the trend the Parole Board itself has been attempting to develop. The expansion of the Parole Board through the appointment of parole examiners and the assistance they are giving at Parole Board hearings, and certainly in the field on revocation hearings, is certainly within the context of this proposal.

I am also strongly in favor of expanding and activating an Advisory Corrections Council, the prototype of which was authorized, but so far as I know, never fully implemented, by Section 5002 (Title 18, U.S. Code) of the Federal Youth Corrections Act passed in 1950. The United States Judicial Conference and the Federal Probation Officers Association have also supported the concept of such an advisory council. (Note proceedings of U.S. Judicial Conference 1967–1968.)

Section 4201

The appointment and duties of regional parole commissioners as outlined in Section 4201 is, in my estimation, a desirable proposal. The concept of a parole team comprised of a regional parole commissioner and two examiners likewise appears to me to be workable. I believe the bill is sound in leaving the total number of commissioners to be appointed open until experience can be gained.

Section 4202

I note that the wording of the first paragraph of this section has added the phrase "or after serving one year, whichever is lesser." The import of this change is not clear to me, since I note that Section 4208 (a)(2) has been eliminated. This latter section (i.e 4208 (a)(2) granted the court power to set a maximum but no minimum, and thus left it solely within the discretion of the Parole Board as to when parole might be granted. I believe such discretion desirable and would urge retention of Section 4208 (a)(2).

I note further that Section 4202 now incorporates what was formerly Sec. 4203, and although paragraph (b) has been condensed, it appears to make no substantive change. Paragraph (c) appears to be a new paragraph setting forth parole conditions which are, I believe, useful. Paragraph (d) appears

to be the same as is now covered in 4203 regarding "residence or participation in a community treatment center.

Paragraph (b) of the present Section 4203 is omitted. This related to the parole eligibility of persons sentenced prior to 1932 and is perhaps no longer relevant.

Section 4203

Section 4203 is a new section with which I am in general accord. However, pending an opportunity to confer with the Chairman of the U.S. Board of Parole, I prefer to defer endorsement of paragraph (b). I believe the authorization of an attorney as advocate at a parole hearing is a new provision, the full implication of which I have not had an opportunity to explore.

Section (c) is new and I defer endorsement of this section pending an opportunity to confer with the Parole Board. It does appear to me, however, that the exclusion procedures related to certain documents are well developed.

Paragraph (d) is endorsed and I believe reflects a practice already being implemented on an experimental basis by the Parole Board.

Paragraph (e) appears reasonable.

Sections 4204 and 4205 are endorsed.

Section 4207

Section 4207 regarding revocation upon retaking a parolee presents a new procedure involving United States Magistrates and although I see much merit in this proposal, I wish to defer endorsement pending an opportunity for further study. (Since the magistrates are under the Judicial Branch, the United States Judicial Conference would appear to be the key witness on this matter.)

The matter of granting bail (paragraph c) is also new and I wish to defer endorsement pending further study.

Section 4208

As mentioned in my comments on Section 4202, I do not believe this revision improves upon the original provisions of Section 4208. I recommend retention of Section 4208 as presently written.

Section 5002

I am in accord with Section 5002, which I believe encompasses the proposals included in S. 2462. The creation and implementation of a permanent Advisory Corrections Council has my strong support and has been officially recommended by the Federal Probation Officers Association.

The Council membership appears to be comprehensive, but, I believe, should also include the Secretary of the Department of Labor, or his designee, at a policy level.

The remaining sections of this proposal—Sections 5005 through 5037 (with the exception of 5007, 5008 and 5009 which are repealed)—appear to be substantially similar to the current statute.

Comments on S. 3185—Federal Corrections Reorganization Act

Although the purposes of this proposal are commendatory, its departure from current operational modes is so sweeping, that its application raises many questions.

In view of the comprehensive study and recommendation now underway by the National Commission on Reform of Federal Criminal Laws, I believe action on a bill as far reaching as this appears to be, should perhaps await the findings and recommendations of the National Commission. The parole selection procedures and decision making processes of the Federal Parole Board are also under study by the research center of the National Council on Crime and Delinquency and the findings of this study may be relevant to organizational proposals of the type suggested in this bill. However, my specific comments on this bill are as follows:

Title I

Title I proposes the establishment of a Federal Correctional Advisory Council, a concept which my previous testimony supports. Although in my experience there has long been a high degree of coordination and cooperation between the Federal Probation Parole Service, the United States Board of Parole and the Bureau of Prisons, I believe an Advisory Corrections Council could strengthen and assure ongoing coordination and long range planning for all the federal correctional services.

Titles II, III and IV

I have major reservations about Titles II, III and IV. As indicated in my testimony above, (on the bill to establish a Parole Commission) I believe the ob-

jectives of S. 3185 can be achieved without abolishing the Parole Board or transferring the Federal Probation Service to a newly created agency. Many excellent traditions and efficient practices have developed under the present coordinated system of federal correctional services and, I believe, modifications and improvements should be built on those foundations.

The first section of this bill sets forth the need to "unify the federal parole, probation and other activities relating to the disposition of Federal offenders."

There is a high degree of unity and coordination at present, and I would like to describe for a moment just how our field services operate. Perhaps it would be instructive to outline the standard procedures which currently apply in processing an offender through the federal courts and correctional services. As I have previously indicated and have set forth in somewhat greater detail in the supplemental exhibits, (see Supplements III and IV) the Federal Probation Service is an integrated operation which handles both probation and parole, and also provides liaison community services to the Bureau of Prisons. In a typical situation when an offender is found guilty, the Federal Court requests a presentence investigation from the probation office and continues the disposition of the case until a comprehensive report has been completed and filed with the court. Federal probation officers are highly skilled, professionally trained men and women and their presentence reports cover the entire gamut of an individual's family background, employment history, educational attainment and prior criminal record, where such exists. In the preparation of these reports, defense counsel and defendant are encouraged to submit any information they think might assist the court in determining the best sentence. If evidence of serious psychological or emotional problem is discovered, referral can be made for a psychiatric evaluation by a psychiatrist on contract at the federal Community Treatment Center. If the court grants probation, the probation office assumes responsibility for probation supervision and has immediate access to the judge should any further action related to possible violations or change of probation conditions be needed.

Supplementing the resources available to the federal probation offices, particularly in our major metropolitan areas, are half-way houses known as Community Treatment Centers operated by the Federal Bureau of Prisons. Under a recent Congressional amendment, the resources of these Centers are now available to the courts in marginal situations where the court may wish to grant probation but finds the probationer in need of shelter care and more intensive supervision. In Chicago, we have a central Community Treatment Center and three satellite branches located at strategic points in the city. I might add that for the past 8 or 9 years, the Federal Probation Office in Chicago has provided physical space within the Probation Office for regional Prison Bureau personnel. For example, two employment placement specialists who are employees of the Federal Prison Bureau assigned to the Community Treatment Center office in our department, provide employment referral services to probationers and parolees as well as the community treatment center residents. During the past three or four years, we have also provided space in our office for a regional representative of the Bureau of Prisons who coordinates the jail inspection, prison designation and Community Treatment Center services of the Bureau of Prisons in a multi-state region. His office is next to mine and I am in constant touch with him and his colleagues on matters of mutual concern. This kind of coordination is typical as the Bureau of Prisons now operates community treatment centers in nine of the largest metropolitan districts in this country and has over 50 contracts with state, county, or private half-way house facilities nationwide.

If on the other hand the court determines that a person is in need of incarceration and he is sentenced to the custody of the Attorney General, our presentence investigation report follows the prisoner to the correctional institution and becomes one of the basic documents of assistance to the prison classification personnel in evaluating and assigning the prisoner to work, education or other specialized programs.

While the offender is in prison, periodic progress reports are submitted by the prison back to the probation office, and are reviewed by the officer who conducted the initial presentence investigation. Ultimately when the offender is eligible for parole, the institution requests that a field pre-parole investigation be conducted. This is usually done by the same officer who made the original community and social investigation. Subsequently when a Parole Board member meets to give the prisoner a parole hearing, the original presentence report and other documents, which have been assembled while the inmate has been confined, and our pre-parole report are available to the Parole Board.

If parole is granted, the offender returns to Chicago and is assigned to supervision either to the officer who originally made the social investigation or to one who has familiarized himself with the case. At that point, the probation officer, of course, becomes the parole agent of the U.S. Board of Parole and works with the Bureau of Prisons employment placement specialist and other community resources to assist the individual make a satisfactory adjustment on parole. A 1970 amendment to Sec. 4203, Title 18, also authorizes the use of the Community Treatment Centers for parolees when such facilities are needed.

It has been suggested that there may be a lack of coordination between the policies of the Federal Parole Board and the probation service as a result of directives being sent out to the field probation officers by both agencies. However, to my knowledge this has never been a problem as for the past 15 or 20 years, we have had an excellent manual jointly prepared bythe Federal Parole Board and the Division of Probation of the Administrative Office which covers all major procedural expectations of the Parole Board and the Probation System. Directives jointly issued by the Division of Probation, the Parole Board and Prison Bureau are well integrated and field probation officers experience no difficulty in carrying out these policies.

I might also add that our Federal Probation Office provides space and frequently secretarial services to members of the Parole Board, or parole examiners who visit our jurisdiction, perhaps to conduct a revocation hearing or to consult on other matters pertaining to our joint operation.

In the Chicago Probation Office further coordination of federal correctional rehabilitative services is assured by providing office space for a Bureau of Prisons specialist assigned to the NARA and Drug Abuse Programs instituted in recent years. Three of my probation officers have been especially designated to serve as liaison representatives with the drug abuse programs and the local clinics, as two of these clinics have entered contracts with the Bureau of Prisons for treatment of addicts under probation or parole supervision.

There are at least three other areas in which our Probation Office gives specialized service which further coordinates the federal criminal justice and correctional goals. The first of these involves our work with the U.S. Attorneys Office in handling deferred prosecution cases. The second is our assistance to the United States magistrates in providing social information and giving supervision to misdemeanant probationers. Thirdly, we are also being asked to participate more and more in certain pre-trial conference and plea bargaining procedures.

Under the deferred prosecution procedures which primarily involve juvenile and youth offenders, the U.S. Attorneys under an Attorney General's directive are authorized to refer young offenders to the probation office when it appears that the ends of justice can be satisfied by deferring prosecution pending a period of community adjustment. In these cases, we provide the U.S. Attorney with a social history and if it appears that we can be of assistance to the defendant, our court has given the probation office blanket authority to accept supervision, and we guide these young people until the completion of their deferred prosecution period. At that point, the prosecution is dismissed. Last year, our office handled over 100 such cases and our violation rate on these is less than 2 per cent.

Our work with the magistrates is similar to our work with the court as we provide them with social histories and supervise misdemeanants on probation under jurisdiction of the magistrate.

In recent years, the development of pre-trial conferences in criminal as well as civil matters has resulted in increased use of plea bargaining. Prior to the final acceptance of tentative plea bargaining agreements, judges often request with approval of defense and prosecution, our probation office to submit pre-disposition social evaluations on criminal defendants involved in plea bargaining procedures.

I have gone into detail on these procedures because I find that few people seem to realize how well integrated the federal correctional services are at the community level and how much service the probation and parole officers give, not only to the district courts, but to the representatives of the Bureau of Prisons and the Board of Parole. (See also Supplement IV).

Although the concept of a district disposition board is an interesting one, I believe we have already achieved many of the aims which are set for such boards and that given adequate manpower, we can perform at an even more efficient level.

Legal issues—Title II and III

Although I am not a lawyer, I believe this bill poses a series of interjurisdictional legal problems which need clarification. Under the traditional separation of powers, it appears to me that this bill raises questions about the role of an executive disposition board in relation to the courts. The tradition of the federal probation officer working in a close team relationship to the federal judge is, I believe, a sound tradition and to interpose a district disposition board would, I believe, fragment rather than improve this tradition.

As this committee is doubtless aware, back in 1964 and 1965, a legislative proposal was introduced which would have transferred the Federal Probation Service from the judiciary to the Department of Justice on the theory that this transfer would somehow improve the coordination of services. That proposal overlooked the fact that approximately 70 to 75 per cent of the work of the federal probation officers is devoted to serving the courts in the preparation of presentence investigations and supervision of probationers. At that time, the late Honorable William B. Herlands, United States District Judge of the Southern District of New York, at the request of the United States Judicial Conference, prepared a comprehensive report on the legal background and administrative development of the Federal Probation Service under the judiciary, and his conclusions unequivocally opposed the transfer. Subsequently, the United States Judicial Conference voted disapproval of these bills and I quote from the 1967 Annual Report of the United States Judicial Conference as follows: "The Conference noted that two identical bills, S. 916 and H.R. 5038, had been introduced in the 90th Congress to create a United States Corrections Service which would remove from court control the supervision of persons on probation. The Conference voted disapproval of these bills in their present form."

These same bills were again introduced the following year, but again as reflected in the 1968 Annual Report of the Judicial Conference, the report stated: "The Conference reaffirms its disapproval of S. 916 and H.R. 5038 in their present forms since these bills would remove from the court control the supervision of persons on probation. The Conference instructed the Director of the Administrative Office to convey to the President of the Senate, the Speaker of the House of Representatives and the Chairman of the Judiciary Committee of each Body, the opposition of the Conference to the bills now pending and the endorsement of the amended draft of S. 916 which would strengthen the correctional organization of the Department of Justice and create a Corrections Council but not divide or dislocate the probation service."

I cannot, of course, speak for the United States Judicial Conference, but I mention this background because I believe any legislative proposal which does not take into consideration the attitudes of the United States Judicial Conference and the federal judiciary as a whole, considering the past actions of the Conference, would appear to me to be confronted with opposition similar to that documented above.

District Disposition Boards

Title III of this bill would apparently create 90 district court disposition boards of five members each. The establishment of such a superstructure is, I believe, more comprehensive than necessary. Not only are there great variations in the size of district court criminal dockets and caseloads, which suggests to me that each district would not need a separate disposition board, but the problem of coordinating and standardizing the work of 90 different boards would pose many difficult problems. I am frankly not convinced that such boards are necessary.

Title IV which would transfer all the functions of the Parole Board and the probation service to the District Disposition Boards, in accord with my prior testimony, is not endorsed.

Senate Bill S. 2383

Section 4202 is amended to specify parole eligibility after serving 1 year on any sentence. As indicated in my comments on this section in the proposed Parole Commission Bill, I am not certain how this relates to Section 4208.

In general I believe the experience of granting parole at the expiration of one third of a definite sentence has proven satisfactory.

The amendment of sub-section (a) Section 4203 does not appear to me to be satisfactory as it fails to include the provision authorizing the Parole Board to designate use of the community treatment centers for parolees.

The amendment to sub-section (a) of Section 4208 eliminates the 1 year sentence as the basic sentence from which a court may designate a minimum

of less than one third the maximum, but apparently eliminates Section 4208 (a) (2) which permits the court to set a maximum and no minimum. I believe the present statute which gives the Parole Board full discretion in such instances is preferable.

The amendment to sub-section (c) of Section 4208 appears to be satisfactory.

Senate Bill S. 3674 and Senate Bill S. 2955

Although I favor an amendment to allow credit for what is commonly referred to as "street time," that is time on parole, following a retaking and return to custody, I believe the amount of such time credited should be left to the discretion of the Parole Board. For this reason I am not in full accord with either of these bills, although I have no strong objection to S. 2955 which would give credit for half the time spent on parole.

Supplement I

Testimony Before Senate Subcommittee on National Penitentiaries of the Senate Committee on the Judiciary Presented by Ben S. Meeker, Chief Probation and Parole Officer, Northern District of Illinois, Chicago, Ill., July 26, 1972

As an administrator of one of the larger federal probation-parole offices, I cannot overemphasize the basic problem which confronts the operation of both the field probation and parole services and the work of the Federal Parole Board, namely the manpower shortage.

Testimony before this Committee has shown the impossible task confronting an eight man parole board which must make over 17,000 major parole decisions involving prisoners at some 30 federal penal and correctional institutions geographically scattered throughout the 50 states. Expanding and regionalizing the Parole Board functions, as is being proposed by your Committee, is, I believe, a sound step forward.

I would like at this point, to focus more specifically on the activity for which I am responsible.

The Federal Parole Office for the Northern District of Illinois encompasses an 18 county district, extending from a line just north of Kankakee, Illinois across the state to a point just above Moline, and includes all the counties north to the Wisconsin line. Within this geographical area reside approximately 7½ million people. Although by far the greatest majority of our probationers and parolees reside in the Chicago and metropolitan area comprising the suburbs and surrounding communities, Federal parole officers in this district supervise parolees and probationers in all 18 counties which requires travel to such communities as Waukegan, Rockford, Freeport, Dixon and Galena on the north, to Princeton, LaSalle, Ottawa and Joliet on the south.

As the nation's second largest industrial and urban community, a Chicago Federal parole officer handles a wide variety of offenders, ranging all the way from bank robbery to minor postal thefts with offenders convicted of Narcotic Act violations and interstate theft making up a significant part of our caseload.

Current Major Problems

1. PROBATION OFFICER MANPOWER SHORTAGE

The major problem currently confronting our Parole Office, and a situation which is typical throughout the Federal Probation and Parole Service is a shortage of officer personnel.

(a) Staff situation—Northern District of Illinois

At present, the professional staff of the Federal Parole Office for the Northern District of Illinois is comprised of 20 field parole officers, two supervisors, a deputy chief, and chief. Our caseload this month (June 1972) is over 1800, which means that the 20 officers are responsible for an average of 90 cases, in addition to their heavy investigative duties for the courts, the Parole Board, and the Bureau of Prisons.

In an annual projection of staff needs, I have just submitted a recommendation for the addition of 14 probation-parole officers and five para-professional probation officer assistants to the staff for this district which would bring our caseload down to an average of approximately 50 cases per regular officer. (An-

ticipating this trend, in 1970 I requested an additional 10 probation officers for fiscal 1971 but funds were not available and no additional officers were authorized. Again in 1971, I requested an additional 12 probation officers for fiscal 1972, but again funds were not available and no expansion was authorized. Our goal is to reach an average of 35 cases which will permit an officer to function at a level in which his professional skills and services can be fully utilized.)

(*b*) *Scope of duties*

In addition to their supervisory responsibilities, I note that last month (June 1972) these 20 officers completed 97 presentence investigations for this Court, 23 presentence investigations for other Federal Courts, and 117 special investigations for such agencies as the U.S. Board of Parole, the Bureau of Prisons, U.S. Disciplinary Barracks, the U.S. Attorney on juvenile cases, and other related agencies.

During the past fiscal year (July 1, 1971–June 30, 1972) our probation office completed 2,379 investigations and the supervision caseload has gone up from 1596 on June 30, 1971 to 1809 on June 30, 1972. The investigative demands have become so heavy that the supervision and surveillance duties of our officers are necessarily curtailed. Officer after officer is reporting that he can no longer do much more than handle the major emergencies which arise on his caseload, as he is forced to devote most of his time to investigations. Counselling probationers on family problems, referring them to programs of vocational training, and helping them find jobs are among the traditional services probation officers are trained to provide, but these services cannot be performed by harrassed, overworked people who must meet court, parole board, and other daily investigative deadlines.

Furthermore, conditions in certain inner city districts, where tensions are high, have increased the hazards of public service, and for security reasons, officers are advised to work in these districts in pairs. This places an additional strain on our available probation officer manpower.

(*c*) *National caseload figures*

The excellent record of the Federal Probation Service in contributing to the protection of the community through supervising and rehabilitating offenders will be placed in serious jeopardy unless additional manpower is made available. The caseload of persons under supervision of federal probation officers, who comprise a force of only 640 officers for the entire United States, was 38,409 at the beginning of fiscal year 1971, and by the end of that year on June 30, 1971, had mounted to 42,349, an increase of over 4000 cases.

A comparison of the current caseloads of Federal probation officers with the standards set forth in the 1967 findings of the President's Commission on Law Enforcement and the Administration of Justice reflects the urgency of this need. That Commission recommended caseloads of no more than 35 probationers per officer. At present, caseloads of Federal probation officers are more than twice that figure.

(*d*) *Increased criminal filings*

Since 1965, the increase in criminal filings in Federal district courts has gone from 31,569 to 41,290, and current projections estimate a similar continuing upward trend. Here in the Northern District of Illinois, the U.S. Attorney reports a 30 per cent increase in criminal case filings during fiscal 1971 and, in fact, during this past year, his staff was doubled, moving from 32 assistant U.S. attorneys to 61 assistant U.S. attorneys. Inevitably this is placing a heavier burden on our Probation Office as the completion of adequate presentence investigations alone, to say nothing of community supervision of parolees and probationers, demand a comparable expansion of the probation officer staff.

Recent demands placed upon the Federal Courts as a result of heavier criminal dockets, expanded U.S. attorney staffs, and pressures for speedier trials, has placed an excessive burden upon an already understaffed Federal Parole-Probation Service. Rule 32 of the Federal Rules of Criminal Procedure requires the preparation of presentence investigation reports by federal probation offices, and these reports are not only valuable to judges but to prison officials and ultimately to the U.S. Board of Parole, since these reports follow an offender through the entire federal correctional process.

(c) Intensive Parole Supervision Standards Proposed

Another important development regards action of the U.S. Board of Parole which has just recommended that a standard be set for parole cases in need of intensive supervision of not more than 25 cases per officer. On July 1, 1972 in this district, 546 or almost one-third of our caseload was parole cases. Thus, even at an average of 50 cases per officer, 11 officers are needed for this group alone.

2. EFFORTS TO IMPROVE THE MANPOWER SHORTAGE

(a) Action of the United States Judicial Conference

At the October 1971 meeting of the United States Judicial Conference, one of the priority proposals approved by the Conference was a report by its Committee on the Administration of the Federal Probation Service recommending a major expansion of the probation field staff. The Conference approved the report which included a fiscal item in the 1973 budget sufficient to employ an additional 348 federal probation officers. Chief Justice Warren E. Burger gave strong support to this budget item.

It is imperative that a balance be maintained among the various agencies engaged in law enforcement and administration of justice. Congress has approved increased appropriations for Federal investigative and prosecutive services as well as for additional Federal judges, and for much needed funds to strengthen the resources of the Bureau of Prisons.

It is now essential for a similar expansion of the Federal Probation and Parole Service to be funded.

(b) Testimony

Testimony before the Subcommittee of the House Appropriations Committee in support of the Judicial Conference recommendation was ably presented this year by representatives of the Conference and the Administrative Office of the U.S. Courts. The Chairman of the U.S. Board of Parole also submitted documentation of the need for additional probation officers. Mr. George Reed, former Board Chairman, has authorized me to quote from his statement. "During the past three years, the United States Board of Parole has undergone a complete reorganization to improve the parole system at the Federal level, including establishing Guidelines for Parole Supervision. In these Guidelines, the Board has established certain criteria supported by its own research—as well as that of state authorities—in the field of parole regarding minimum requirements necessary in parole supervision if we are to reduce the number of parole failures.

"United States probation officers are employees of the Federal District Courts who are, by statute, also required to provide services for the Board of Parole, i.e., the supervision of parolees and mandatory releases under its jurisdiction, including making reports to the Board's adult and youth division executives in accordance with our policy.

"In establishing Parole Supervision Guidelines, the Board has set up the following three levels of supervision: (a) maximum supervision; (b) medium supervision, and (c) minimum supervision. At the present time, 5,500—or approximately one-half of the 11,067 parole and mandatory releasees under supervision in the community—are considered 'maximum supervision.' This is especially true of parolees released under the Narcotic Addict Rehabilitation Act program, where very close individual contact is imperative if they are to succeed in the community. Also of great concern to the Board are the 'marginal' parole risk releasees who require maximum supervision--especially during the first six months of their release. Past research indicates that cases classified 'maximum supervision' should have a ratio of one office to every 25 individuals. Individuals under supervision in the 'medium supervision' category should have a ratio of one officer to every 50 individuals. While the President's Crime Committee Report recommends a caseload of one officer to every 35 individuals, the Board feels that the aforementioned ratio of officers to individuals is a more realistic and attainable goal.

"The U.S. Board of Parole strongly supports the 1973 fiscal year budget of the Administrative Office of the U.S. Courts request for 348 new Federal probation officers."

Supplement II

Testimony of Chief U.S. Probation Officer, Ben S. Meeker, Northern District of Illinois, on Legislative Proposals Contained in H.R. 13118, Presented Before Subcommittee No. 3 of the House Committee on the Judiciary, on March 1, 1972

I have reviewed H.R. 13118 known as the "Parole Improvement and Procedures Act of 1972." However, since I serve as the legal agent of the United States Board of Parole in the areas of pre-parole investigation and parole supervision, and have not had an opportunity to confer with the Chairman and members of the Board on the individual provisions of this Bill, I prefer not to testify on the specific sections of this proposed legislation.

However, I would like to present some comments on my philosophy toward parole and its use, and suggest some of the guiding principles which I think might be considered in proposing any amendments or major changes in the current Federal parole laws.

1. THE PLACE OF PAROLE IN THE ADMINISTRATION OF JUSTICE

I believe that the use of parole can be expanded, provided sufficient numbers of parole officers and collateral resources are available to effectively work with individual parolees. The American Bar Association project on Minimum Standards for Criminal Justice in its report titled "Sentencing Alternatives and Procedures" has suggested to the courts that in sentencing, a preference should be given to the use of probation. I believe there is much to be said for developing a similar attitude toward the grant of parole provided that adequate parole supervision personnel and collateral resources such as employment placement specialists, half-way houses and similar supportive programs are available.

Recent trends in parole legislation have tended to emphasize the civil rights of parolees, but I think insufficient consideration has been given to the human needs and resources which should also be rights of paroled offenders. The right to non-discriminatory employment is a fundamental right which should be afforded persons released on parole. It is encouraging to see legislative enactments at the state level which are eliminating the traditional restriction on employment for persons who have been convicted of felonies.

Under the provisions of the Criminal Justice Act, Congress has taken strong leadership in providing additional resources in the way of half-way houses, community treatment centers and work release and similar programs.

2. EXPANSION OF PAROLE BOARD AND STAFF

I believe the second important legislative step should be a major enlargement of the Federal Parole Board to a minimum of 15 members, with an equal number of parole examiners, all of whom would have the power to convene and conduct parole hearings.

Justification for this proposal is to be found in the tremendous geographical area to be covered, the large number of widely scattered Federal penal and correctional institutions and the tremendous volume of decision making required of the Board.

A secondary reason for recommending such expansion is the need for much more direct communication between the Federal Parole Board and the field parole services. This is particularly true in the large metropolitan areas where the accessibility of a Parole Board member on a periodic, regularly scheduled basis is desirable. At present, in my experience, Parole Board members are so harassed with the current tremendous pressure of travel and endless hearings, that they seldom have time to visit and consult with chief parole officers and field parole staffs except at training sessions, or when revocation hearings may be scheduled.

When one is working with parolees constant emergencies arise, particularly in relation to apparent or alleged parole violations, and although the United States Parole Executive gives excellent service insofar as his time permits, the volume and breadth of communication which is constantly transmitted between the field and his office inevitably results in delays which affect the efficient operation of our field services. If, in addition to periodic visits from Parole Board members, regional representatives of the Parole Executive's office could visit and consult with Federal field parole staffs on a regular basis, I believe the

quality of communication and the expediting of decisions relative to revocations and other emergencies could be facilitated.

3. BOARD MEMBERSHIP

Over the years, I have worked with many Parole Board members, and have come to believe that sound professional educational standards, coupled with a knowledge and understanding of human behavior and a stable personality are among the characteristics required of a competent Board Member. An education in one of the fields of social science, such as psychology, social work, sociology or law, particularly when coupled with experience as a field probation or parole officer, or as a professional person directing or serving in a correctional institution, will usually assure an objective, professional approach to selection for parole.

Limiting the membership on a Parole Board to certain specific categories such as a lawyer, correctional worker, former offender, etc., is not so important as examining individuals from those areas of service in terms of their professional attitudes and skills.

Evaluating and predicting future human behavior is, in my estimation, the most difficult of assignments and requires a judicial temperament, great objectivity and a keen understanding of human behavior. I am strongly in favor of recruiting from a variety of backgrounds, including ex-offenders and perhaps correctional officers, provided sound professional qualifications are also present.

4. PAROLE BOARD POWERS

I am generally in favor of expanding the powers of the Federal Parole Board to permit the greatest possible use of community resources which may contribute to successful parole. Such efforts should be coordinated with the activities of the Bureau of Prisons which has authority to contract for shelter care and operate half-way houses, etc. If resources in certain areas are not available, and it would facilitate the work of the Parole Board to be enabled to contract for such services, I believe this would be justified.

It is also my recommendation that the Federal Parole Board be authorized to provide certain emergency funds to assist in immediate care of impecunious parolees. Hardly a day goes by in a metropolitan area such as Chicago, when an emergency arises in which funds for emergency shelter, carfare to prospective employers, or an immediate purchase of clothing is desirable. For a number of years, a local prisoner's aid association made available funds to the Federal Parole Office for the assistance of such parolees, but in recent years these funds have not been available. A few years ago, I recommended to the then Director of the Bureau of Prisons that the Federal Prison Industries Incorporated funds be tapped for emergency grants to parolees when legal or other local restrictions on welfare or emergency funds precluded immediate assistance. I believe there is a need for some systematic study and possible legislation for a program of this type.

5. PAROLE REVOCATION PROCEDURES

In an era when personal and civil rights are receiving widespread attention, it is important for the rights of parolees, who are alleged to have violated their parole, to be given due consideration. I have mixed feelings, however, as to whether parole revocation should move fully into the area of adversary proceedings. This may lead to a technical legal approach to parole supervision, rather than a flexible socially constructive counselling service. One of the practical problems faced by busy parole administrators with overworked staffs is the tremendous amount of time involved in processing revocation proceedings under the current rules. Under these rules, the field parole officer institutes the initial interrogation, which has become almost a preliminary hearing, at which time a determination is made as to whether a parolee will request a full dress revocation hearing with witnesses and attorneys present. The time involved in making the arrangements for such hearings has become excessive. This problem is, of course, related to staff shortages generally, but I have reached the opinion that an expansion of the central staff of the Federal Parole Board to include regional representatives with specialized legal training who could be assigned to travel between the metropolitan districts in order to facilitate these revocation procedures would be desirable. Most parole officers are not legally trained, and although they should be available to testify at revocation hearings, it would appear to be more efficient for other legally trained personnel to handle these formal procedures.

6. OTHER LEGAL QUESTIONS

(*a*) *Reasons for parole denial*

In general, I favor the giving of information relating to reasons for the grant or denial of parole. For example, I have noted that most federal judges when they sentence a man to prison express certain reasons for the sentence. An offender may not concur with the reason but at any rate he has an idea as to why the sentence awarded was given. I do not believe the denial of probation is appealable, however, and I have some reservations about attempting to establish procedures which would make the denial of parole appealable.

However, for morale as well as legal purposes, I believe a prisoner is entitled to know in general why he has been denied parole. In the field, we frequently get inquiries from families or legal counsel as to why a person has been denied parole, and until recently when the Parole Board modified its rules, we were unable to give any reason other than conjecture based on our experience relative to similar cases.

One of the inherent difficulties in establishing fixed reasons for the grant or denial of parole, it seems to me, relates to the fact that in our system of justice sentencing persons to prison has both a punitive and corrective aspect. Determining just where punishment ends and correctional treatment begins, is a difficult philosophical question, and yet I am sure these are among the realities which influence the grant or denial of parole. On the other hand, I believe it is very important to the morale of an offender to have some idea when he is denied parole what he must do to receive favorable action at a later date. The prisoner who believes he has taken advantage of everything the prison offers to equip him for parole is entitled to some explanation when parole is denied. I think we all realize that there is a group of what are termed "prison wise" or institutionalized offenders who do participate in all the activities offered by the prison, but whose long records of habitual criminality mitigate against their parole. Yet even in these cases, candid reasons can be given for the parole denial.

(*b*) *Termination of parole and good time allowances*

As to termination of parole supervision, I have long believed that the Parole Board should have the power to terminate parole earlier than the original sentence just as a court may terminate probation prior to completion of the original probation sentence. Whether or not good time should be allowed on parole supervision time is not so important as the provision for early termination.

(*c*) *Credit for street time*

I do believe, however, that offenders whose parole has been revoked should be given credit for street time if not for the full time at least on a percentage formula.

(*d*) *Elimination of legal disabilities*

I am strongly in favor of Federal legislation to authorize the removal of disqualifications or disabilities which flow from any conviction.

I would also favor a law providing for the supression of a criminal record after a reasonable period of time in which a person has maintained a clear record. Such laws exist in a number of countries. For example, in the German Federal Republic and in Japan, if a person convicted of a felony maintains a clear record of from 5 to 8 years following a conviction, the record is suppressed and does not come to light unless the person again commits an offense. This avoids the stigma of a prior record arising to preclude certain areas of private employment, military service, or a career in public service.

7. NATIONAL TRAINING CENTERS

I am strongly in favor of legislation to further strengthen professional education and training in the field of probation, parole and corrections. Such legislation should, however, be coordinated between the Executive and Judicial Branches.

In 1967, Congress authorized the establishment of the Federal Judicial Center (Public Law 90–219) which has a mandate to conduct research and training at all levels of Federal judicial administration—including probation.

At the National Corrections Conference convened at Williamsburg, Virginia on December 6, 1971, Attorney General Mitchell announced plans for the establishment of a National Corrections Academy which apparently would include training and research in the area of parole. I am fully in accord with the con-

cept and aims of a National Parole Institute but believe it should be affiliated, or its program integrated into the activities of the Federal Judicial Center and the proposed National Corrections Academy. It is particularly important for the Federal Government to be giving leadership in this area since the advent of LEAA which underwrites state programs but does not finance comparable federal programs.

Supplement III

Summary of the Background and Development of an Effective Well Coordinated Federal Probation and Parole System

(Commentary by Ben S. Meeker, Chief U.S. Probation Officer, Northern District of Illinois)

Although administratively attached to the Federal Courts, since 1930 Federal probation officers have also served as parole officers for the Federal Parole Board, and liaison community representatives for the Bureau of Prisons. As I look back over a period of more than 25 years of association with the Federal Probation Service, I am convinced of the wisdom of the decision to develop Federal probation and parole as an integrated system. The problems presented by offenders, whether they are granted outright probation by the courts or placed on parole following a period of incarceration are similar. Of equal importance from the standpoint of efficiency is the tradition of one field service which follows an offender from point of conviction on through to termination of parole or mandatory release. The utilization of legal and social information about an offender by the courts, correctional institutions, the Parole Board and the field parole officer has proven effective.

The period of the thirties was the pioneer decade for the Federal Probation and Parole Service during which time the nationwide staff expanded from 8 officers in 1930, to 233 officers in 1940. During this decade, basic procedures were developed and sound communication lines established between the courts, the Parole Board and the Federal Bureau of Prisons. Following the establishment of the Administrative Office of the United States Courts in 1940, the Federal Probation and Parole Service entered a new era in which a number of trends can be observed.

1. First was the establishment of a Division of Probation within the Administrative Office which recommended nationwide standards for the selection of probation-parole officers, and a steady professionalization of the Federal parole service has continued. The service grew from its complement of 233 officers in 1940, to a current complement of 648 officers. The strong tradition of professionalization is reflected in the qualifications of probation officers, who are required to have college degrees and at least two years of graduate education, or two years of experience in corrections or a related service. Approximately one-third of the officers nationwide have completed masters degrees in fields of social work, psychology, sociology or other social sciences. Since 1950, a masters degree has been a requirement for appointment to a position on the staff of the Federal Parole Office in the Northern District of Illinois.

2. The second major trend during the period subsequent to 1940, has been a strong tradition of inservice training for Federal probation-parole officers. Regional training institutes, commenced in the late 1930's, have continued throughout the past three decades and between 1950 and 1970 the Federal Probation Service operated a nationwide inservice Traning Center, located in the Northern District of Illinois, through an affiliation with local universities and with strong support from former Chief Judge William J. Campbell of the District Court, the Administrative Office of the U.S. Courts, the U.S. Parole Board and the Federal Bureau of Prisons. With the advent of the Federal Judicial Center, this training operation has now been taken over by that activity under the administration of Judge Alfred P. Murrah, Director of the Federal Judicial Center.

3. A third tradition which has characterized the Federal Probation Service has been the development of very close coordination and communication between the Board of Parole, the Bureau of Prisons and the Federal Probation and Parole Service.

This coordination has been developed through close cooperation at top administrative levels between the Chief of the Division of Probation of the Administrative Office, the Chairman and members of the U.S. Board of Parole,

and the Director of the Bureau of Prisons. Field visits from staff assistants from the Division of Probation of the Administrative Office have also been of great value. The problem here has been the acute shortage of professional assistants in the Division of Probation of the Administrative Office which has curtailed opportunuities for more intensive field consultation with these Administrative Office representatives. Likewise, limitations on the number of Parole Board members and staff assistants has curtailed field visits.

A number of other effective communication channels have also been maintained. First was the development of an excellent manual for the operation of all Federal Parole Offices, which has been prepared jointly by representatives of the Division of Probation, the Board of Parole and the Bureau of Prisons. This manual which is kept up-to-date by frequent directives issued from these three correctional services to the field officers has proven to be a highly unifying force.

Another channel has been the training tradition previously referred to. Each year, a series of orientation sessions for new officers, and refresher schools for seasoned officers are scheduled. For over 20 years, representatives of the Parole Board. the Bureau of Prisons and the Division of Probation have lectured at these training school sessions. Seven or eight such schools, each of one week's duration, have been convened each year since 1950.

A further channel of communication has been the excellent journal *Federal Probation* distributed to all probation officers, and in fact, to correctional departments, libraries, and agencies worldwide. This Journal has become the bible for federal and state probation and parole services.

Supplement IV

Outline of Duties Added to the Federal Probation Service Since 1942

(Commentary of Ben S. Meeker, Chief U.S. Probation Officer, Northern District of Illinois)

As one reviews the history of the Federal Probation System, one finds that at the outset, our primary responsibilities were devoted to presentence investigations and supervision of probationers and parolees for the courts and the Federal Parole Board. Experience has shown the validity of a combined probation and parole service, but over the years many new duties have been added and fundamental changes in community conditions are presenting unanticipated demands upon our time.

1. MILITARY PRE-PAROLE INVESTIGATING AND PAROLE SUPERVISION ADDED

In 1944, during World War II, the Probation Service was asked to handle supervision of military parolees, a service which we are continuing to provide for the Army, Air Force and Navy correctional programs.

2. YOUTH CORRECTIONS ACT

In the early 50's with the advent of the Youth Corrections Act, we were asked to provide more intensive supervision of youthful offenders and to submit periodic special progress reports to the Parole Board on the adjustment of these offenders. This legislation also authorized the courts to refer youth offenders to the Bureau of Prisons for study and observation prior to sentence. These cases frequently require supplemental investigations by the probation officers.

3. SENTENCING ALTERNATIVES

Following the 1950 Youth Corrections Act (Title 18, Sec. 5005–5026), came an Indeterminate Sentencing Act in 1958 (Title 18, Sec. 5208 and 5209) which includes provision for study and observation of adult offenders by the Bureau of Prisons, and an amendment for split-sentences (Title 18, Sec. 3651) also added another alternative.

The Narcotic Addict Rehabilitation Act of 1966 (Pub. Law 89–793) presented a complex set of alternative procedures for handling narcotic violators, and a series of provisions under the Criminal Justice Act making available work release programs, community treatment centers (half-way houses) for inmates,

and now available for probationers and parolees, has added yet another set of important alternatives.

Utilization of the new community treatment centers as a part of the probation and parole process imposes upon the probation officer the responsibility to select and recommend to the court, or Parole Board as the case may be, candidates for such treatment; to oversee their progress; and ultimately, in cooperation with community treatment center staff, to recommend their release back into the community under supervision.

The expansion of sentencing alternatives, all along the way, have placed additional requirements on probation officers to include reference to these alternatives in the preparation of presentence reports. Probation officers have also found that the courts turn to them more and more for guidance on the relevance of alternative dispositions to specific offenders.

All of these developments have added, not only to the resources available, but to the complexities of keeping abreast of new resources and the necessity of maintaining continuing overview of the quality of these treatment programs.

4. SELECTIVE SERVICE VIOLATORS

During the 1960's, there was an expansion of Selective Service violators, and an increase in the number of conscientious objectors about whom the courts and institutions desired additional information. Post-sentence reports to penal institutions has been a standard practice. Probation officers have also been asked to find hospital and agency work of national importance for such persons. Currently, a backlog of these cases is being addressed by the U.S. Attorneys and the Courts. Supplemental evaluations on these offenders are being requested of probation offices in a great many instances.

5. DRUG ABUSE LEGISLATION

The Narcotic Addict Rehabilitation Act of 1966 placed new duties upon federal probation officers in the development of after-care programs; in a continuing responsibility to maintain an overview of those programs for the Bureau of Prisons and Parole Board; and to provide the special supervision necessary for these problem cases. In some metropolitan areas probation officers have been assigned specialized small caseloads of drug abuse cases only. There is much administrative detail attached to the after-care program for narcotic offenders.

There is also a widepread increase in the use of marijuana among young offenders, many of whom are brought to trial in federal courts. These are often potentially useful young people who respond to probation counselling and guidance when time is available for such assistance.

6. CLASSIFICATION AND INTENSIVE SUPERVISION OF PAROLE CASES

A few months ago, the United States Board of Parole issued a directive indicating its plan to recommend that more intensive supervision be given to parole and mandatory release cases. The purpose behind this proposal is sound as the Parole Board hopes that through such a program recidivism rates may be reduced. To accomplish the degree of field supervision proposed would require a marked increase in time devoted to parole cases. Chief probation officers from a variety of districts have estimated that to accomplish the degree of supervision requested, would necessitate at least a third more officers. Similar supervision standards for probationers is also a goal we believe should be sought. (About one-third of our field caseloads are parole and mandatory release cases.)

7. INCREASE IN SPECIAL ASSIGNMENTS

Following the 1963 "Hyser Decision" (Hyser v. Reed—318 F. 2d 225, Cert. Den 375 US 957), the Parole Board established procedures which require that all alleged parole violators be given an initial interview by the probation officer at which time a determination is made to the alleged violator's desire for a local revocation hearing, employment of legal counsel, appearance of witnesses, etc.

These preliminary interviews are time consuming and require the preparation of forms and the filing of a special report with the U.S. Board of Parole. Recently, as a consequence of an amendment to the Criminal Justice Act, a new "Attorney Selection" procedure has been established, and the probation officer is to review this matter with each alleged parole violator during the preliminary interview.

Other special assignments have been the preparation of social histories, on deferred prosecution cases referred to probation offices by the U.S. Attorney's office; pre-prosecution cases, particularly where district court judges hold limited court sessions at a number of locations in a district; and more recently an increasing number of court requests for special pre-bail bond evaluations by probation officers.

8. RATE OF DISPOSITIONS BEING ACCELERATED

The increase in the number of federal judgeships expedites the disposition of cases and places greater expectations upon the probation officers to complete presentence investigations. The tempo of indictments in many districts, particularly following the increase in Assistant U.S. Attorney positions, is already beginning to show up in an added number of presentence investigation requests.

The new Magistrate's Act will also involve additional duties for probation officers.

9. COMMUNITY HAZARDS AND SOPHISTICATION OF OFFENDERS

During the past decade there has been a noticeable increase in the sophistication of offenders, many of whom are suspicious and difficult to work with. There is a noticeable shift in the focus of the Department of Justice toward the prosecution of organized crime, narcotics, revolutionary or riot inciting, and arms carrying offenders. Getting to the bottom of information on many of these complex cases requires continuous contact with local, state and federal intelligence agencies.

In the field we are also experiencing significant changes in the attitudes of offenders and in community tensions and hostilities, particularly in the inner-city areas. Securing information is difficult and time consuming, and in the more turbulent areas it is sometimes necessary to send officers in pairs.

Providing adequate supervision for an increasingly younger age offender and assisting them in finding employment when job opportunities are somewhat curtailed, is continuing to make the task of field supervsion more and more challenging. The higher incidence of unemployment in the inner-city, as well as marginal rural areas, is well documented.

CONCLUSION

One of the easily overlooked aspects of thes developments is the great expansion in the specialized areas to which a probation officer must relate. Orginally, his contacts were mainly with the court, the Parole Board, and his "clients". Now, he must spread his services over a wide spectrum and his administrative duties and diverse communication requirements have made his job far more complicated. If he is to have time to really get to know and supervise his probationers and parolees adequately, he must be given a manageable caseload.

STATEMENT OF WAYNE P. JACKSON, CHIEF OF THE DIVISION OF PROBATION, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman and members of the subcommittee, I am Wayne P. Jackson, chief of the Division of Probation, Administrative Office of the United States Courts. By way of personal background I am a native of Illinois, hold bachelor's and master's degrees in psychology from the University of Tulsa, and have done post graduate work at the Illinois Institute of Technology. My experience in law enforcement and corrections includes 3 years as a police officer for the city of Tulsa and 2 years as a probation counselor with the Tulsa County Juvenile Court before my appointment as a federal probation officer for the Northern District of Illinois in 1959. I became assistant chief of the Division of Probation in the Administrative Office in 1967 and assumed my present duties on July 1 of this year.

I appreciate the opportunity to appear before the Subcommittee in connection with its consideration of S. 2383, S. 2462, S. 2955, S. 3185, as amended. S. 3674, and the unnumbered bill to establish the Parole Commission. The Judicial Conference of the United States has not considered any of these bills therefore I cannot express a view as to the merits of the legislation or any of the proposals contained therein.

However, I do wish to acquaint the Subcommittee with the organization, activities, and goals of the Federal Probation System and my opinion of the potential impact of the proposed legislation on the probation service.

In addressing myself to these matters I shall attempt to avoid repeating material that Judge Van Dusen will be presenting to the Subcommittee.

The Federal Probation System, established in 1925, now consists of 640 probation officers located in 185 field offices serving 91 judicial districts in the United States, the District of Columbia, and Puerto Rico. The programs and services of the field offices are coordinated by the Division of Probation, Administrative Office of the United States Courts. The Division carries the responsibility for budgeting, personnel administration, and promoting the efficient operation of the system.

In addition to their responsibilities to the various district courts, since 1930 the federal probation officers have served also as parole officers and performed "such duties with respect to persons on parole as the Attorney General shall request" (18 U.S.C. 3655).

At the close of fiscal year 1971 the Federal Probation System had 42,549 persons under supervision, and increase of 10.8 percent over the preceding year. Of this number 11,067 were persons on parole or mandatory release. By March 31, 1972, the total of persons under supervision had risen to 46,730 and the parole and mandatory release figure had increased to 11,666.

During fiscal year 1971 probation officers completed 23,479 presentence investigations, an increase of 9.5 percent over the preceding year. By March 31, 1972, probation officers had completed 19,483 presentence investigations, an increase of 18.3 percent over the corresponding period of the previous year.

The central goal of the Federal Probation System is to increase the security of our communities by reducing the incidence of new crimes committed by persons who previously have been convicted. Public safety demands that dangerous offenders be removed from society and held as long as they remain a danger. However, the vast majority of federal offenders are not in prisons, they are in the community.

Reduction in recidivism is accomplished by successful reintegration of the offender into the community. I feel it is significant that of those persons under federal probation more than 80 percent complete their terms without violation, and of those under parole more than 65 percent complete parole without violation.

Much has been said about the relative costs of probation and parole versus institutional confinement. While it is true that these forms of supervision are less expensive we must not lose sight of the fact that *fully effective* community supervision will cost a great deal more than it has in the past.

In recent years the per capita cost of confinement in the federal system has been at least 10 times the cost of probation or parole supervision. In fiscal year 1971 the cost of confining one inmate in the Bureau of Prisons was $4,315 as opposed to the cost of $413 for a person under probation or parole supervision.

The Chamber of Commerce has concluded in their publication, *Marshaling Citizen Power To Modernize Corrections* (copyright 1972) that "based on current per capita cost, it is estimated that it takes $11,000 a year to keep a married man in prison. This figure includes the inmate's loss of earnings, the cost to taxpayers if his family has to go on relief, and the loss of taxes he would pay."

When considering the cost of confinement we cannot restrict ourselves solely to the fiscal aspects. How do we assess the costs to the person confined in terms of the stigma of imprisonment, the loss of self-respect, and disruption of normal personal relationship?

To put relative cost figures in their proper perspective we acknowledge that a *fully effective* program of community supervision requires more than probation and parole services as historically practiced. Community-based corrections encompasses far more than probation and parole. Former Attorney General Ramsey Clark has stated that "95 cents of every dollar spent in penology is for custody, pure custody—iron bars and stone walls: 5 cents is for services essential to rehabilitation and crime reduction."

In recent years the imaginative shift within the Bureau of Prisons toward community-based corrections has produced programs of community treatment centers, furlough-work release, employment placement services, and contract aftercare services for addicted or drug dependent persons, to mention only a few. The costs of the programs while included in the budget of the Bureau of Prisons should more properly be assessed to the cost of community supervision.

In January 1971 the Board of Parole issued specific guidelines for the supervision of persons under its jurisdiction for implementation when the probation system had sufficient personnel available (copy attached). In reviewing the

guidelines and attempting to assess their impact we determined that of the 11,000 releases under supervision, 5,500–6,000 would require maximum supervision. To meet the requirements of the Board would require the full-time services of 220–240 line probation officers.

We have reviewed S. 2383, S. 2462, S. 2955, S. 3185, as amended, S. 3674, and the draft legislation which would establish the Parole Commission, for their impact upon the work of federal probation officers.

That portion of S. 2383 that would amend 18 U.S.C. 4202 to reduce the parole eligibility date to one-third of the sentence or one year, whichever is the lesser, could increase the number of parolees received for supervision and lengthen the period of parole. However, this assumes no dramatic change in sentences imposed by the courts and further assumes that the Board of Parole would grant earlier paroles in keeping with the earlier eligibility date.

In fiscal year 1971 the courts sentenced to imprisonment a total of 15,459 convicted defendants. Of this number 7,706 received sentences of 3 or more years. The proposed amendment would create earlier parole eligibility for the majority of these offenders.

That portion of S. 2383 that would amend 18 U.S.C. 4208(c) to require the Bureau of Prisons to prepare a complete study of each prisoner sentenced to imprisonment for a term of over 180 days could materially increase the demand for investigations by probation officers.

In fiscal year 1971 the courts sentenced 33,604 convicted defendants. During the same period the probation officers completed 23,479 presentence investigations.

For years the Bureau of Prisons has depended on the probation officer's presentence report as the foundation for their studies of committed offenders. We assume the proposed amendment would increase the number of studies required which would result in the need for a presentence report in practically all cases of committed offenders.

Regarding S. 2462, we cannot predict the impact on the workload for field personnel.

Both S. 2955 and S. 3674 would reduce the amount of time a prisoner is required to serve as a result of being returned as a parole violator. This may result in a modest decrease in the term of supervision of a person again released on parole or mandatory release. Further, there could be a modest decline in the number of persons re-released to supervision.

The impact of S. 3185 as amended, would be the elimination of the Federal Probation System as presently constituted.

That portion of the draft bill to establish the Parole Commission that would amend 18 U.S.C. 4207 to provide for an adversary type hearing before a United States magistrate for every alleged parole violator would undoubtedly result in a dramatic increase in the number of hearings in which probation officers are involved and a corresponding increase in the demands on the probation officer's time.

The biennial report of the United States Board of Parole, 1969–1970, indicates that in fiscal 1970, 65 local revocation hearings were held by the Board. In the same year the Board issued 1,647 warrants.

Regarding the same legislative proposal, amended section 4208(c) would have the impact described above at S. 2383.

Diverting offenders from continuance in criminal courses of conduct is the mission of the Federal Probation System. We stand ready to implement any new legislation that enhances the success of our mission. We ask only that the Congress provide us with sufficient manpower to achieve this end.

Mr. Chariman and Members of the Subcommittee, I appreciate the opportunity to appear before you today. I shall be happy to answer any questions that you may have.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS.
Washington, D.C., January 7, 1971.

Re Guidelines for Parole Supervision.

Memorandum to Chief Probation Officers and Officers in Charge of Units:

Attached for your information and review is a final draft of parole supervision guidelines approved by the Board of Parole for adoption as soon as sufficient probation personnel are available to implement them.

I ask that each of you carefully review your current parole and mandatory release caseload in light of these supervision guidelines. The number of addi-

tional personnel you will rquire in your district to provide the intensity of supervision requested by the Board of Parole should be given to your Chief Judge for inclusion in his projection of personnel needs, due May 1, 1971, for consideration by the Subcommittee on Supporting Personnel of the Judicial Conference Committee on Court Administration (see AO Memorandum of November 24, 1970).

WILLIAM A. COHAN, Jr.,
Assistant Chief of Probation.

RELEASE PLAN

1. Attitude (caseworker's evaluation of inmate's attitude toward parole/mandatory release conditions).
2. Residence (specify plan and indicate attitude of inmate toward those he will be living with or near; where known, specify attitude of family or friends involved in residence plan).
3. Education (specify plans regarding continuing education as it relates to release employment, future employability, and vocational interests or activities).
4. Employment (specify immediate employment plans and capability regarding same and state relationship to vocational training or industrial training; where indicated, specify assistance planned or needed to obtain employment).
5. Community services (specify, as appropriate, participation in community service programs, i.e., family counseling, AA, psychiatric/psychological counseling, antinarcotic testing, etc.).
6. Avocational/leisure interests and activities (specify interests and plans, and as related to past experience).
7. Special condition (recommend any special condition for Board approval).

INITIAL INTERVIEW

Prior to the initial interview, the probation officer should review the case file and re-acquaint himself with the parole plan. The initial interview should be held at the earliest possible time following release to explain the supervision plan to the parolee and to offer him guidance and instruction.

REVIEW OF SUPERVISION PLAN

Based upon prerelease planning, the approved parole plan, and the initial interview, the probation officer should record in the case file the initial plan of supervision for each case and indicate the level of supervision. The Board recommends that the chief probation officer, or the supervisor, immediately review the case file; and where the problems and needs of the case warrant, discuss the plan of supervision with the probation officer; that he also establish a date for the first regular case review (see "Case Review," p. 6).

TYPES OF CONTACTS

The types of supervision contacts are the following:

1. *Personal contact.* A personal contact is a face-to-face contact between the probation officer and the parolee.

The contact should serve to establish constructive relationship with the releasee, assist and evaluate current activities, discover and counsel regarding current problems.

2. *Collateral contact.* A collateral contact is a telephone or personal contact about the parolee with a person other than the parolee, for example, a family member, friend, adviser, or employer.

These contacts may be with family members, friends, employer, community services personnel, community treatment center staff, law enforcement officers, etc. These contacts should serve to obtain information regarding the parolee's present attitude, activities and problems.

3. *Group contact.* This is a contact with the parolee as a member of a regularly scheduled counseling or discussion group.

The contact should serve to utilize peer influence and to observe the individual's response, as well as to evaluate current attitudes and prospective behavior.

4. *Monthly supervision report.* Prompt review of information in the monthly supervision report (Form 8) is an essential part of supervision.

Information contained in the monthly supervision report may serve to assist the probation officer in determining supervision requirements.

CRITERIA FOR MAXIMUM SUPERVISION

The following criteria will serve as a *guideline to help determine* whether a parolee is in need of maximum supervision:

1. Type of Offense:
   (a) Crimes of violence (robbery, assault, sex with force, homicide, kidnapping).
   (b) Organized crime offenses.
   (c) Crimes with high violation rates (by recidivists):
      (1) Burglary.
      (2) Theft, auto.
      (3) Narcotics, excluding marihuana.
2. Prior record: Extensive or serious criminal history.
3. Social and personal factors:
   (a) Instability of residence.
   (b) Instability of employment.
   (c) Instability of marriage.
   (d) Submarginal income.
   (e) History of mental illness.
   (f) Narcotic and drug abuse.
   (g) Excessive use of alcohol.
   (h) Lack of community ties.
   (i) Inadequate occupational skills.
   (j) Chronic health problems.
   (k) Functional illiteracy.
   (l) Negative attitude toward authority.

CRITERIA FOR MINIMUM SUPERVISION

1. Type of Offense (subject to further verification):
   (a) Liquor laws.
   (b) Selective Service laws, excluding those persons who advocate or engage in violence or anarchy.
   (c) Embezzlement, fraud, income tax laws.
2. Prior record: Absence of extensive or serious criminal history, or absence of physical violence
3. Social and personal factors
   (a) Stability as reflected in employment, residence and marriage.
   (b) Absence of drug use or excessive use of alcohol.

CRITERIA FOR MEDIUM SUPERVISION

Cases which do not meet the criteria for maximum or minimum supervision are classified to receive medium supervision.

FREQUENCY OF CONTACTS

The frequency of personal and collateral contacts recommended for parole supervision is as follows:

1. Maximum supervision: No less than four contacts per month, at least three of which are personal, plus review of each supervision report (Form 8).
2. Medium supervision: No less than two contacts per month, at least one of which is personal, plus review of each written supervision report (Form 8).
3. Minimum supervision: No less than two contacts per quarter, at least one of which is personal, plus review of each supervision report (Form 8).

Whenever the geographical area makes the number of recommended personal contacts impossible, the probation officer may substitute an appropriate number of collateral contacts. The number of personal contacts should be not less than half of the required number of contacts.

CASE REVIEW

On a scheduled basis and also in special situations, it is recommended that the chief probation officer or the supervisor review with the probation officer his supervision of his cases, assess the quality of supervision rendered, and evaluate and modify, if necessary, the supervision plan, which may include a change in degree of supervision. Such review will determine whether the case recording is up-to-date and correctly reflects the problems and needs of the parolee, how he is meeting them, the substance of the action taken by the probation officer together with the parolee, the progress or success achieved as the result of previous meetings together and actions taken, the problems that still remain, and the probation officer's relationship with the parolee.

Minimum supervision cases should be considered for possible termination.

FIELD SUPERVISION EVALUATION

Periodically the chief probation officer or the supervisor may find it helpful to accompany the probation officer for observation of personal and collateral contacts in the field.

REPORTING OF ARRESTS

Arrests of parolees must be reported to the Board of Parole as outlined in the Probation Officers Manual, paragraph 8.32.

EVALUATION OF PAROLE SUPERVISION PLAN

At least annually, a review of this over-all parole supervision plan will be made, jointly, by the Chief of Probation and the Board of Parole. Such review should consider the extent to which the plan has been carried out; results obtained; suggestions for revision; adequacy of budgetary resources; and future plan of operation.

Senator BURDICK. Well, gentlemen, time is up and I thank you very much for your contributions this morning.

The committee will be recessed until 10 o'clock tomorrow and the prepared statements of each of you will be made a part of the record.

(Whereupon, at 12:37 p.m., the hearing was recessed to reconvene on Thursday, July 27, 1972, at 10 a.m.)

PAROLE LEGISLATION

THURSDAY, JULY 27, 1972

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice at 10 a.m., in room 2228, New Senate Office Building, Senator Quentin N. Burdick presiding.

Present: Senators Burdick (presiding) and Mathias.

Also present: James G. Meeker, staff director, Christopher Erlewine, assistant counsel; Ronald E. Meredith, minority counsel; Judith E. Snopek, chief clerk; Orrell D. Schmitz, research assistant; and Rita Highbaugh, minority research assistant.

Senator BURDICK. The hearing will please come to order.

Our first witness this morning will be Hon. Charles H. Percy, U.S. Senator from Illinois.

Welcome to the committee, Senator.

STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator PERCY. Mr. Chairman, I am delighted to be with you this morning.

I commend you on these hearings and I would like to have heard them yesterday but, unfortunately, I just returned from Chicago this morning. I would like to compliment you, the chairman of the subcommittee, for having them and for having them in depth, and also for our ranking Republican, Senator Cook, for his deep interest, and Senator Mathias interest in this field. One of the bills that I will be testifying on is actually title V of the omnibus crime bill, S. 4392, which a number of us cosponsored.

I will limit my testimony today to S. 3185, which I introduced on February 17, 1972, with Senators Brock and Montoya, and S. 3674, which I introduced on June 6 of this year.

Mr. Chairman, I want to offer for the record a complete copy of my testimony, which is rather lengthy. With your permission, I will summarize my remarks before you this morning.

Senator BURDICK. Your complete statement will be received and made a part of the record at this point.

(The complete prepared statement of Senator Percy, above-referred to, follows:)

STATEMENT BY SENATOR CHARLES H. PERCY

Mr. Chairman, let me first say how pleased I am to be able to testify today before this very distinguished subcommittee. I want to compliment the Subcommittee, and the distinguished chairman, Senator Burdick, for holding such prompt and indepth hearings on the bills which have been the subject of testimony these last three days.

I will limit my testimony to S. 3185, which I introduced on February 17, 1972, with Senators Brock and Montoya, and S. 3674, which I introduced on June 6 of this year.

The "criminal justice system" is a phrase used widely today to describe broadly the goal and apparatus of our police, our courts and our prisons. The goal is justice and protection from crime for the victim, and fairness and rehabilitation for the offender. To accomplish the goal we try to employ a system of coordinated, interdependent effort between the police, courts and prisons. In my judgment, however, this so called criminal justice system neither dispenses justice nor even vaguely resembles a system.

As a measure of the success of our attempt to control crime, crime statistics compiled over the past twelve years indicate our efforts have been wholly inadequate. While our population rose 13.3% between 1960 and 1970, violent crime rose 142% and property crime rose 161%. But these estimates themselves are probably low since a number of important factors are excluded such as embezzlement, tax fraud and price-fixing—the "white collar" crimes.[1] They are also limited to reported crimes. The National Opinion Research Center estimates that the rate for violent crimes in 1965–66 was almost double that actually reported, forcible rapes almost four times the rate reported, and burglary more than three times the rate reported.[2]

Furthermore, only one out of every seventy reported crimes may result in an individual being charged, convicted, sentenced and incarcerated.[3] Those who are sentenced also reveal how much of a failure our efforts have been. About 80% of all felonies are committed by repeaters, and about two-thirds of all prison inmates have been in prison previously.[4]

There have been efforts to reform the system, but too often these efforts have been haphazard and piecemeal. Attention may be focused on one aspect of the system but another equally important and vitally related aspect may be completely ignored. A good example involves the Court Reform and Criminal Procedures Act of 1970, referred to popularly as the D.C. Crime Bill (PL 91–358). While modernizing courtroom management procedures, the bill left the other parts of the system virtually unable to cope with the inevitable result of the new procedures—a massive influx of new cases.

In hearings before the Senate Subcommittee on Business, Commerce and the Judiciary of the Committtee on the District of Columbia on June 16, 1971, the consequences were described dramatically. Because of the new procedures in the Act, an increase in prosecutions was anticipated, from 2,150 in 1970 to 3,700 in 1972, and to an estimated 5,200 in 1973. This in turn is expected to cause an increase in the overall number of offenders committted to the D.C. Department of Corrections from some 3,972 in September of 1970 to an estimated 5,258 by the end of June, 1972.

But facilities have not expanded to meet the need. The Department of Corrections is now seriously contemplating the use of 10 railroad cars in which to house 200 inmates to help relieve the severe overcrowding in local prisons.[5] a membership of eight along with eight hearing examiners, the Board had authority over 20,687 prisoners in fiscal year 1970. In that year, the Board made 17,453 official decisions, each requiring the concurrence of at least two members. Thus, there were actually close to 35,000 individual decisions made by these eight men. In addition, the members and examiners conducted 11,784 personal hearings in prisons.[6]

At the federal level, the crisis is no less severe. Perhaps no better example of a completely overburdened system exists than the U.S. Board of Parole. With

[1] Congressionally Quarterly Fact Sheet, June 18, 1971, p. 1336.
[2] *Id.*, p. 1339
[3] Congressional Record, Dec. 7, 1971, p. S20746.
[4] Congressional Quarterly, June 4, 1971, p. 1219.
[5] Letter from Kenneth Hardy, Director, D.C. Department of Corrections, to Senator Percy, 6/23/72.
[6] Biennial Report, The U.S. Board of Parole, 7/1/68–6/30/70 p. 16–17.

Where the Board members to have the patience of Job and the wisdom of Solomon, they still could not make 35,000 individual decisions in one year with anything approaching the care and close personal attention that the needs of society demand. Yet, this is what they are forced to do each year.

At the operational level, the burdens are also overwhelming. 640 federal probation officers supervise 45,177 people, an average of 71 per officer, twice the recommended level of 35. In large metropolitan areas, the caseload is over 100 per officer.

That the criminal justice system is a failure is not a new conclusion. Everyone from the President and the Chief Justice on down has pointed to the stunning failure of the system to serve and to protect society. President Nixon pointed out that "The various stages of rehabilitation are often poorly coordinated at present. The offender cannot proceed in an orderly manner from confinement to work release to release under supervision and finally to an unsupervised release. The unification of the various programs involved could bring to this process the coordination and sense of progression it badly needs." [7]

Fortunately, we have not been lacking in those who are willing to offer some new ideas as well as condemnations. Since 1967, four presidential commissions, dozens of legislative reports and more than 500 books and articles have recommended reforms of our correctional system.[8] Thorough reforms have been recommended as far back as the Wickersham Commission Report in 1929–1931, but virtually nothing has resulted in positive steps to remake the system in a total and complete fashion.

I am not an expert in the area of criminal justice. My background is in business, and in the years I have been in the Senate, I have tried to look at the operations of the government from a common-sense point of view. Where a problem exists, a solution should be found; where the solution exists, it should be implemented. The President has given me the responsibility of introducing and managing four major Executive Reorganization bills which are now pending before the Congress.[9] It seems to me to be entirely consistent to continue this effort to reorganize the government in other areas where it is dtsperately needed. Certainly, there is such a need in the criminal justice system.

For these reasons, I introduced the Federal Corrections Reorganization Act, S. 3185, on February 17, 1972. This bill is an attempt on my part to reorganize those parts of the system of justice on the federal level which have failed us in the past. The bill provides a new structure which will incorporate many suggestions that have been made, but which have never been fully implemented. The major new reform is the structure that would be established. The new programs that would be provided have been suggested and tested by some of the most respected people in the field of criminal justice. As President Nixon observed, however, in his address at Williamsburg on March 11, 1971, " 'reform' as an abstraction is something that everybody is for, but reform as a specific is something that a lot of people are against."

I have found this to be true concerning prison reform. I have received much favorable comment on the bill, and everyone agrees that something should be done, yet many people are reluctant to discard the present system. I hope that through these hearings, we will all benefit from the critical comment that I hope to receive. I might add that I have redrafted this bill several times based on comments received. I originally introduced it not so much because I considered it to be the final solution to the problems of the criminal justice system, (because it is not) but because I felt that it was necessary to put a new idea on paper so that it could generate thought, comment, and hopefully, some results.

I will analyze the bill in the following pages: how it changes the current system; the new organization it would create; the new programs that it would encourage; and the results I believe it could achieve. It should be kept in mind that this bill is an organizational bill. We are all certainly cognizant of the need to deal with the problems that foster and promote crime, and our efforts in this regard should continue unabated. But while we are working on these long-term problems, we should not ignore the problems presented by the failings of the system which should be redesigned to deal effectively with our daily problems involving crime.

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[7] White House statement, issued 11/13 69.
[8] Time Magazine, 1/18/71, p. 46.
[9] S. 1430–S. 1433.

TITLE 1—FEDERAL CORRECTIONS ADVISORY COUNCIL

18 USC 5002 authorizes the creation of an "Advisory Corrections Council." Established in law in 1950, the purpose of the Council was to "improve the administration of criminal justice and assure the coordination and integration of policies respecting the disposition, treatment, and correction of all persons convicted of offenses against the United States. It shall also consider measures to promote the prevention of crime and delinquency, (and) suggest appropriate studies in this connection to be undertaken by agencies both public and private." On paper, this Council sounded like a great idea. Unfortunately, however, it has remained only on paper for the last several years. While our crime rate has been skyrocketing and our system of justice has been staggering, the Advisory Corrections Council has not met for at least the last five years. No one is exactly sure the last time the members of the Council got together.

The role that Council is designated by Statute to fill is an important one. Yet, today that role is not being adequately filled. In another organizational effort, in response to President Nixon's memorandum of November 13, 1969, the Inter-Agency Council on Corrections was established within the Executive branch of the government. According to its Director, Norman Carlson, this Council has three goals:

(1) Develop recommendations for national policies and priorities in corrections.

(2) Develop strategies and mechanisms to implement national corrections policies and priorities.

(3) Develop methods of maintaining closer coordination between federal agencies, private industry, labor, and state and local jurisdictions in an endeavor to develop better tools as aids in the correction of the offender.[10]

I think that these are fine ideas, but more is needed. Certainly there is a great need for coordination within the government in this area. It is the responsibility of Congress to take the initiative, and build on the present foundation to try to bring some order out of the chaos that now exists in our criminal justice system.

To illustrate how pressing this problem is, let me relate one experience that I had in this matter. I was interested to know exactly how much money was being spent by the federal government in programs designed to benefit the criminal offender. This should not be such a complicated task. However, I found that no one knew who was spending how much and for what. No one knew. Consequently, on October 28, 1971, I requested the Comptroller General of the United States to initiate an investigation in an attempt to answer this simple question. The efficiency of the General Accounting Office is well known, yet despite its efficiency, it took more than half a year for GAO to get the information. Seven months later, on May 17, 1972, I receive the report of the Comptroller General. He had been able to identify 11 different federal departments and agencies which were conducting programs designed to help rehabilitate the criminal offender, programs that together were costing the government $192 million a year.[11]

The programs that the report identified were all worthwhile projects, but that is not the point. The point is that no one knew what the government as a whole was doing. There was no coordination among these programs. We were spending close to 200 million a year in such a totally uncoordinated manner that it took more than a half of a year just to find the programs.If a business were to operate this way, it would be bankrupt.

The result of this inquiry, I believe, presents dramatic evidence for the need to have a coordinating body to keep track of all the various government activities in this area, as well as the developments in the private sector, and to be able to recommend further steps to the government. I believe that the Federal Corrections Advisory Council, established in Title I of S. 3185 can be such a coordinating body.

The membership of the Council needs to be diverse and professional. It should be grounded in practicality and academia. The Council as I now propose it would have as its members, two former federal prisoners, two criminologists, an attorney, a former or retired federal judge, two law enforcement officials, two sociologists, two psychologists, one person representing the communications media, and one person who has some knowledge and interest in this area, but

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[10] Letter from Norman Carlson, Chairman, Inter-Agency Council on Corrections, to Senator Percy, 7/7/71.

[11] GAO outline (attached).

who may not fit into any particular category. In addition, various officials of the government would serve as ex-officio members of the Council.

The Council would have three main purposes:

(1) to exercise an investigative and advisory role in the oversight and direction of the federal corrections system;

(2) to recommend standards and guidelines for States to meet in order for them to be eligible to receive grants under any Federal program involving state law enforcement and correctional agencies, including the reorganization of their criminal justice system in a manner consistent with the rest of the bill; and

(3) to serve as a clearinghouse for study, planning and dissemination of information in the field of corrections.

The Council would establish a study center at which information could be collected and disseminated. It would sponsor seminars for judges, attorneys, correctional officers, and all the other people who are part of the criminal justice systm in order for them to become more aware of how thty fit together as a system. Out of such a structure would emerge new ideas and suggestions on how the system might operate in a more efficient manner. Specifically, the Council would recommend a complete reorganizaiton of our federal correctional facilities in order to give more flexibility to the disposition of cases that come into the criminal justice system.

I envision this body as a group of people who meet regularly and examine the workings of the system from many vantage points. Each year, it would issue a report to each of the three branches of our government, recommending what each of them should do in order to keep the system of justice operating at peak efficiency while at the same time guaranteeing justice and safety for all members of society.

Groups such as the Vera Institute of Justice in New York and the EXCEL program in Indiana are working in the field of corrections. Their successes should be made part of the system, and their observations would be invaluable as we begin to reform our system. We need some central body that can collect all this information, bring it to the attention of those others who are working in this area, and be the catalyst for new ideas and programs.[12]

The Council established by Title I of S. 3185 would serve this function, and I believe that it would perform its task well. It is about time that we stopped merely talking about the need for such a body, while allowing other such bodies without clear-cut charters and diversified enough membership, to languish in the statute books, giving the appearance of oversight operations without any substance. We need to establish an effective body, that will have the authority and responsibility of finding new solutions to old problems in a way that will truly serve the needs of today's society.

TITLE II—FEDERAL CIRCUIT OFFENDER DISPOSITION BOARD

In the operational phase of the criminal justice system, an overall authority is needed which will have administrative responsibility for the functioning of the new system established in S. 3185. At present, there is absolutely no uniformity in the way our federal courts deal with offenders who are brought before the bench. This lack of uniformity is most prevalent in sentences that are imposed by the federal courts. For instance, in 1965, the average length of prison sentences for narcotics violations was 83 months in the 10th Circuit, but only 44 months in the 3rd Circuit. During 1962, the average sentence for forgery ranged from a high of 68 months in the Northern District of Mississippi to a low of 7 months in the Southern District of Mississippi.[13] Despite our practical experience, I am sure that no one would challenge the verity of the statement that "Unwarranted sentencing disparity is contrary to the principle of evenhanded administration of the criminal law.[14]

In workshop sessions at the Federal Institute on Disparity of Sentences, judges were given sets of facts for several offenders and offenses and were asked

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[12] In the President's memorandum of November 13, 1969, his twelfth point cited the need for just such a system. "Clearly the poor record of our rehabilitative efforts indicates that we are doing something wrong and that we need extended research both on existing programs and on suggested new methods." Citing the large number of federal agencies involved in the field of corrections, he said that "if all of these efforts are to be effectively coordinated then some one authority must do the coordinating."

[13] Task Force Report on the Courts, The President's Commission on Law Enforcement and Administration of Justice, Chapter 2, "Sentencing," p. 23.

[14] *Id.*, p. 23.

what sentences they would have imposed. In one case involving tax evasion, of 54 judges who responded, 3 judges voted for a fine only; 23 voted for probation; and, 28 voted for prison terms ranging from less than one year to five years. As a result of this type of experiment, judges themselves have attempted to resolve these discrepancies by coming together to study and learn of various sentencing techniques. While I think that this is a good start, it could be said that judges have more important things to do with their time than try to solve a problem that is inherent in the federal system of justice. Their very great value is that of being individuals learned in the law. When we give them the added burden of attempting to deal with the problems of a disjointed system, it can only diminish their effectiveness. The task of providing for a coordinated sentencing policy in the federal judicial system should be given to a body that is better suited to that type of problem. Since the problem is national in scope, a national body is needed.

Title II of S. 3185, would establish a Federal Circuit Offender Disposition Board (the Circuit Board) to handle precisely this type of problem. The Circuit Board would set national guidelines for the imposition of sentences. This would not be a national body that just arbitrarily imposed its will on every judge in the country. Basic to an understanding of sentencing is that there will probably never be, and perhaps should never be, complete uniformity of sentencing. This would ignore the need for individualized, if not personalized, attention given to a particular offender by a judge. The Circuit Board, however, would help the federal judiciary to function harmoniously as component parts of a coordinated system of justice.

The Circuit Board would be composed of 11 members, each of whom would represent one federal circuit. The members would represent a broad background from such fields as corrections, psychiatry, psychology, sociology, law, medicine, education and vocational training. In addition to setting sentencing guidelines, it would also establish guidelines for federal courts in pre-trial release, diversion in lieu of prosecution, probation, parole, diversion in lieu of incarceration, and incarceration.

Nor would the Circuit Board be bound to just one facet of the criminal justice system. Questions involving bail, alternative programs, parole and incarceration are integrally tied in with the sentencing function. All of these facets of the criminal justice system should be coordinated on a national level by the Circuit Board.

The Circuit Board would also hear appeals from decisions made concerning release from prison on parole. Since it will establish national policy on parole, it is the logical body to handle appeals of this nature.

In this regard, it would be much like the present United States Board of Parole, except that it would be relieved from the every day decision-making process. The U.S. Board of Parole relies very heavily on the recommendations of its hearing examiners in making its decisions concerning parole, to the extent that an estimated 85% of all Parole Board decisions are really the hearing examiner's decision with the Parole Board's concurrence. Under the new system which S. 3185 would establish, the operational decisions would be made on a local level, and the Circuit Board could concentrate on its very important function of policy setting and appellate hearings.

With each member of the Circuit Board representing a federal circuit, each member would have the responsibility of overseeing the direction and operation of the various local (District) boards within each circuit. So in essence, a pyramidal structure is established providing for a continuity of responsibility along with a decision making structure that would free the local boards from policy detail, and free the Circuit Board from operational detail.

TITLE III—DISTRICT COURT OFFENDER DISPOSITION BOARDS

When a person is apprehended and charged with the commision of a federal crime, the process through which he proceeds from arrest to release should be one coordinated movement. It should have some continuity. Now, questions of setting bail, pretrial procedures, presentencing investigations, tests and evaluations to determine prison assignments, and eligibility for parole are all determined by separate agencies, with little or no coordination among them.

The effect of this uncoordinated activity is that an offender is often shunted from agency to office to department to board, minimizing the effectiveness of each

[15] *id.*, p. 23.

body and reducing the possibility for rehabilitation. Neither the individual offender nor society, I believe, is served by such a haphazard process.

S. 3185 would replace the present process with a system of District Court Offender Disposition Boards (District Boards). Each federal district would have a District Board to serve as the coordinating body of professionals which the rest of the system could rely on. The membership of each District Board would represent the same diverse background as that of the Circuit Board. Given the varying caseload of individual districts, the number of people on each District Board should be flexible, but each Board should have at least 5 members.[16]

The District Boards are designed with two major focuses: regionalization and unification. For instance, in the parole area, no longer would 35,000 individual decisions along with 11,748 personal hearings be made by eight overburdened men assisted by eight equally overburdened hearing examiners, located thousands of miles away, with little or no time to investigate most cases with any degree of personalized attention. Instead, each District Board would have an average of about 400 cases a year to which it could give detailed attention.

This process of regionalization is probably the least controversial of the bill. In personal conversation with George Reed, former Chairman of the U.S. Board of Parole, I was assured that this was the direction in which the parole process must move. Regionalization of decision making, with the right to appeal to a national body, is the only logical way to deal with the large number of cases that come into our criminal justice system each year. It certainly is not an unheard of approach since this is the modern trial method. We have come a long way in our judicial system from the days when judges would ride a circuit. Yet in our parole process, we are just barely at that stage. The regionalization of the decision making process would, in my judgment, merely bring the parole process into the twentieth century.

Unification is a much more difficult concept to sell, and I think that the reasons are obvious. Few bureaucracies will willingly dismantle themselves. If left alone, it will continue to function with the speed and direction of an amoeba. Perhaps we can afford this type of resistance to change in some areas of our society, asking for our money and patience, but giving us nothing but inefficiency and an alarming rate of failure of close to 70%

There has been quite a bit of discussion as to whether we might not solve the problem by grafting on to the old system new procedures and rights. Yet this approach would further burden an already overburdened system, leaving us worse off than we are now. The way to resolve the problem is to scrap the system which does not work and replace it with one designed to meet the needs of both offender and society.

The new system must be designed with care. It must ensure professionalism and personal attention. It must ensure fairness. It must provide officials of the system with the time to consider carefully all of the relevant factors which should be considered in deciding questions such as reducing the charge, sentencing and parole. But more than this, any new system should be just that—a system, coordinated and integrated with the other aspects of the criminal justice system. Similar functions should be performed by the same body, and that body should be a reservoir of expertise that other parts of the system can rely on for sound recommendations and for efficient operations. By unifying within the District Boards these various functions, this type of coordinated system would emerge.

After arrest each defendant would be assigned to the District Board. The first task the District Board would have would be to recommend the type of bail that should be set. At this point, the District Board would become acquainted with the individual. Certainly at this point, only a relatively cursory examination into the defendant's background can take place. But it is useless for this examination to take place, as it must, and then have someone else go over the same ground at a later point in the proceedings. The process of sifting through the

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[16] The total number of cases commenced in all 90 District courts throughout the United States and Puerto Rico were 35,413 in 1969 and 39,995 in 1970. The average number of cases begun each year in a district court was 393 in 1969 and 444 in 1970. Figures for the District Courts of Illinois are a good example of the various caseloads:

Northern District of Illinois:
1969: 755.
1970: 625.

Eastern District of Illinois:
1969: 95.
1970: 186.

Southern District of Illinois:
1969: 161.
1970: 188.

information with an eye towards how best to proceed with the individual case can begin at this early stage.

This information would be distilled into a formal report so that at the proper time a precharge conference could be held, in which the counsel for the defense and the prosecuting attorney would participate. Unlike the present plea-bargaining conference that is now held, the primary concern of the participants would not be how to get the case out of the way so that the system can continue to grope along relying on pleas of guilty. In the precharge conference, the appropriateness of noncriminal disposition of the case would be discussed.[17]

Not every defendant ought to be prosecuted. Chief Judge Harold H. Greene of the District of Columbia testified before the Congress on June 23, 1971 that "present court figures suggest that perhaps as many as twenty percent of the total number of cases prosecuted annually might be diverted from the criminal justice system if a narcotics pre-trial diversion project were fully implemented." In the same way, confirmed alcoholics should not be processed through the criminal justice system. Sick people are not going to benefit from legal interference. According to figures supplied by the Manhattan Bowery Project, arrests of drunks accounts for almost a third of all arrests. Before that project originated in 1969, arrests in the Bowery from May through July of 1968 for disorderly conduct, loitering and public intoxication totalled 1,674. During the corresponding period in 1969, when alcoholics were diverted from the criminal justice system, arrests dropped to 270.

Certainly the federal system will not be plagued by the same number of alcoholics or drug addicts, but if they do find their way into the system, there should be a process set up whereby they can be diverted from the legal system into medical facilities where both they and society will benefit. There is little use in prosecuting a sick person for having exhibited the symptoms of his disease, but that is what we continue to do with alarming frequency.

Likewise, there are offenders who may not be sick but whose problem can be better dealt with in a diversion project rather than by prosecution. In New York, the VERA Institute of Justice sponsored the Manhattan Court Employment Project which sought to divert those defendants who could be placed in some type of vocational training program. Alcoholics and drug addicts were specifically excluded from this project. The results of this project were very dramatic.

The rate of *arrest* among participants while active in the program, on the average during the second quarter of fiscal year 71–72, was .039%.[18] This project established a regular procedure where defendants were screened and a determination was made as to the possibility of them being diverted in lieu of prosecution. Great concern was given to ensuring that not only would the offender be helped, but more importantly, that society would be protected. If we want results from our criminal justice system, if we want to be protected from crime, if we want a correctional system that pays for itself many times over by truly helping to "correct" an offender, then it is programs like this that need to be utilized. The Precharge Conference would provide an opportunity where decisions of this type could be made, based on sound background developed by the District Board.

The diversionary programs that I envision would, of course, depend on the consent of the particular defendant. The charges would be held in abeyance until such time as the defendant either demonstrates his successful completion of his diversion project, or he is terminated in the project and prosecution is resumed. Going hand in hand with any type of program like this should be an intensive counseling program coordinated by the District Board.[19]

If the experience of the projects that I have mentioned were indicative of the success I feel the new system will bring, there would be a substantial benefit to society in terms of reduced crime. The savings to society from the reduction of crime would more than offset any increased costs of the reorganization. The potential benefits in terms of resources as well as human potential are enormous. Diversion projects have, to my satisfaction, proven their worth. The system should therefore be designed in such a fashion so that such diversion decisions can be intelligently made.

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[17] This is a suggestion of the President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts, page 7–9.

[18] "Quarterly Report", The Court Employment Project, Second Quarter, Fiscal Year 1971–72, p. 5.

[19] This type of program is also authorized in S. 3309, which was introduced by Senator Quentin Burdick (D-N.D.), and of which I am a co-sponsor.

If the defendant were prosecuted and convicted, the District Board would again play a very important role. Once the offender has been convicted, the question is, what do we do with him? As pointed out above, many judges will disagree on the disposition. But in S. 3185, the Federal Board will have established broad national sentencing guidelines. Within these guidelines, it will be the responsibility of the District Board to recommend to the Court the sentence that should be imposed on the offender. It would base its recommendation not only on its professional background, but also on the great deal of information which it had accumulated during the period when the offender was being prosecuted.

At present, pre-sentence reports are used quite widely. These reports are preparded by probation officers who have a caseload of two to three times greater than that recommended, and who among other things, serve as parole officers as well. Because of their burdensome caseloads, they do not have the time to give the proper and complete attention to the pre-sentence report.

Under the new system, the local board would recommend not only the sentence to be imposed, such as probation, a fine, an alternative to incarceration, or incarceration, but its recommendation would also include two new and very significant additional parts: the purpose or reason for imposing the sentence, and the goals the offender needs to attain in order to be released from the jurisdiction of the court. In the latter case, if incarceration were imposed, the recommendation would include the goals for the offender to attain while in prison in order for him to be released on parole.

The Supreme Court has noted four purposes for imposing a sentence of imprisonment: 1) deterrence of similar crimes, 2) protection of society, 3) discipline of the offender, and 4) rehabilitation of the offender.[20] There may be more reasons; yet too often these are never articulated. We never know exactly why we as a society and through a judge have imposed a particular sentence. In S. 3185, the District Board would make it clear why we are doing what we are doing.

The second important addition would be the recommendation as to the goals to be attained by the offender. The sentence should be shaped to the offender. By making the punishment fit the criminal, the chances are much better for true rehabilitation. Consequently, sentencing should be a goal-orienting process. Not only would the District Board set out very clearly what the offender has to do to be released from prison if incarceration were recommended, but "a detailed judicial determination of the specific goal to be attained by supervised confinement would provide administrators with guides for shaping the individual's correctional experience as well as serve as a benchmark by which the progress and nature of each prisoner's treatment within the institution could be judged." [21]

The new procedures in S. 3185 would give to the sentencing process the attention and professionalism it has long deserved. In a society interested in the rights of the accused, we have tended to focus all of our attention on the trial procedure. However, it is probably more important to society, in the long run, what we do with a criminal after we have convicted him. The Courts themselves have recognized this by focusing more directly on the sentencing procedure, prison conditions and parole procedures. It is long past the time when the process of sentencing should have been raised to a more professional status.

In a report prepared for me by the Library of Congress on September 30, 1971, a study examined the procedures for sentencing criminals in foreign countries. That report indicated the use that other countries have made of outside experts who aid the court in the sentencing process. Though all of the countries studied permitted the finding of guilt as well as the responsibility of imposing a sentence by the courts, "these standard procedures do not prevent the courts from seeking expert advice where problems arise as to the imputability of a crime because of the mental condition of the defendant, or other factors residing within him or his environment. In Scandinavian countries, for instance, the courts as a practical matter rely heavily on the advice of experts who are appointed directly by the courts, rather than appearing as expert witnesses for the defense or the prosecution." [22]

Informal procedures have developed, both in this country and abroad, which recognize the inability of the court, by itself, to adequately determine a sentence.

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[20] *Trial* magazine, "A Judicial Mandate," by Judge Donald P. Lay, U.S. Court of Appeals, Eighth Circuit, November/December 1971, p. 15.

[21] *Id.*, p. 18.

[22] "Procedure for Sentencing Criminals in Foreign Countries", The Library of Congress Law Library, Washington, D.C., September, 1971, p. 1.

Consequently, advice and recomendations are sought, be it through a pre-sentence report by a probation officer, or from a panel of experts. Given the great importance of the sentencing process, this informal way of dealing with sentencing should be given a formal structure through which the most competent and professional advice can reach the court on a regular basis. The present haphazard manner of getting this type of information should be traded in for a newer model. I think that in this regard, the United States can be a leader, showing the legal community of the world the way in this complicated problem.

This recommendation by the Board would not bind the judge one way or another. At all times, the judge would retain his prerogative to reject the advice and impose his own sentence. However, in doing this, he too would have to put on the record his reasons for imposing the particular sentence and the goals he feels that the offender should attain. I believe this additional procedure is necessary to protect society and the rights of the individual offender.

No matter what the sentence of the court, the District Board would retain responsibility for the offender until he was released from the jurisdiction of the court. For instance, if the offender were released into the community under limited supervision, his community officer would be under the jurisdiction of the District Board. Today, if an offender is placed on probation, his probation officer would be under the jurisdiction of the court. I don't see any reason why a probation officer should be under the administrative authority of the courts. The courts already have enough to do. Since an administrative body, the District Board, would already be in existence, good management dictates that a community officer be under the District Board's administrative responsibility. The community officer would help the offender work to achieve the goals set for him by the court which would be synonymous with successful reintegration with the community as a responsible citizen.

Despite the fact that parole and probation, two supervised releases, have evolved in an historically distinct manner, it makes little sense to institutionalize an historical accident by keeping these two very similar functions separate and distinct. Today, for instance, one man may be both a probation officer reporting to the court, and a parole officer reporting to the parole board. In either case, he is performing essentially the same type of function, but he responds to two different masters that may have two different philosophies. The community officer would be under one jurisdiction, the District Board, which would handle the administrative problems and ensure that the sentence and its goals could be carried out in the most efficient manner. The Interim Report of North Carolina Penal Study Committee could find "no logical reason why these persons should not be supervised by one department. The education, training, and type of supervision is essentially the same." That conclusion is sound, and should be implemented on the federal level.

If the offender were incarcerated, the value of the goals set by the trial judge would be quite significant. At present, too many inmates do not have a clear idea of what they have to do in order for them to be released back into the community.

I have received innumerable letters from prisoners who have been denied parole and they do not know why. They were not told with any specificity what they had to do to make parole, other than to "be good." When parole is denied them, they often wait months for a one word answer, "yes" or "no." The U.S. Board of Parole cites the lack of manpower available to it as the reason for not giving reasons for denial of parole and this is a reasonable explanation. In two institutions, the Parole Board has instituted the use of a check off list[23] in order to provide reasons to a prisoner. But these reasons include, "He has not done enough in the institution to improve himself." "He was a key figure in the offense," and "Because of the nature of the offense, justice requires that he be confined a longer period of time."

This is not the type of in-depth report that inspires a prisoner to strive to improve himself. He still does not know what he has to do to be denied Parole or what he must do in the future. What can he do if he is denied parole at a date when the judge knew he would be eligible for parole? Even if he is a perfect or "model" prisoner, he may be denied parole. The anger and frustration that this arbitrary process causes must be deemed to be one of the prime causes not only for prison unrest, but also for the high rate of recidivism among ex-offenders.

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[23] U.S. Board of Parole, Form H–7(a).

Under the system established in S. 3185, this antiquated process would be eliminated by a system of incentives based on reason. Upon entering prison, the offender would know why he was sentenced, and what he had to do to get out. The goals would always be there towards which he could strive. At least once a year, the District Board would hold a hearing to determine the prisoner's progress. These hearings would be in-depth meetings by people who had been with the man's case from the time he was arrested. They would not be like the present parole hearing: five minutes before an overworded and nameless official. During these hearings, a review of the offender's progress would be made, and within two weeks, a decision as to the suitability of parole for the offender would be given to the offender. Within another two weeks, the detailed reasons for the denial of parole would be given to the offender, hopefully accompanied by a personal visit. In this way, after each of these meetings, the offender would very clearly know he had done right and what he had done wrong. He would know what was expected of him to be released.

One of the likely benefits of this type of approach would be a reduction in tension inside our prisons, and an increasing focus on the rehabilitation of the individual offender. Under this new system those individuals who threaten the safety of the community would be less likely to be released into the community, but those who could be safely released under community supervision would have the chance to rejoin their family and community, with an increased chance of staying out of prison.

Once released on parole, the offender's community officer would also be under the authority of the District Board. His progress in the community could be monitored in a manner that would help the offender to readjust to his surroundings while at the same time, helping to insure the safety of society.[24]

The District Board would be a logical body to fill a very pressing need. By regionalizing, it would make the decision-making process one that is open to thought and personalized attention. By unifying, it would eliminate needless duplication while at the same time serving as an integral part of our criminal justice system. Perhaps we are still doomed to muddle through experiences like that of Jarndyce and Jarndyce cited by Dickens in *Bleak House*.[25] Perhaps we will continue to tolerate a system that does nothing but produce failures. Perhaps But I will not sit idly by while this happens. Common sense demands that something be done, and S. 3185 suggests a new system that would truly serve society by insuring that our system of justice becomes a system worthy of the lofty role we expect it to play.

Mr. Chairman, I would like to add just a few words concerning S. 3674. I doubt anyone would deny the usefulness of an effective parole system. However, at present, both in the District of Columbia and in the Federal system generally, a situation exists which thwarts the basic purpose of parole. In these two jurisdictions, a parolee is sometimes given credit for the time he spends on parole toward the running of his sentence. For example, if a man were sentenced to 15 years in prison, he would be eligible for parole after 5 years. If paroled at that time, he would be under parole supervision for the remaining 10 years of his sentence. Once 15 years has passed from the time of the imposition of his sentence, he would be released from the jurisdiction of the court, and would be deemed to have served his sentence. In other words, though he was on parole for the final 10 years, the man would still be serving his sentence.

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[24] The Interim Report of the North Carolina Penal Study Committee recommended this type of common sense approach. On March 15, 1971, it said that "the supervision of all persons convicted of crime and who are released and placed on probation, parole or given conditional release should be supervised under one system" (p13).

[25] (The Court was) mistily engaged in one of ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horse-hair warded heads against walls of words, and making a pretense of equity with serious faces, as players might. . . .Well may the court be dim, with wasting candles here and there; well may the fog hang heavy in it, as if it would never get out; well may the stained glass windows lose their colour, and admit no light of day into the place; well may the uninitiated from the streets, who peep in through the glass panes on the door, be deterred from entrance by its owlish aspect . . . but Jarndyce and Jarndyce still drags its dreary length before the court, perenially hopeless. The empty court is locked up (now). If all the injustice it has committed, and all the misery it has caused, could be locked up with it, and the whole burnt away in a great funeral pyre—why so much the better.

However, let us assume that after 9 years on parole, the man violated his parole. The violation could be either a minor technical violation, or it could be a violation resulting from the commission of a crime. In either case, at the present time in the District of Columbia, and in the Federal system, not only would that man be sent back to prison for the 1 remaining year, but he would also have to serve the 9 years that he had been on parole as well as any sentence imposed for the new crime. As a result, he is given no credit for the time that he was on parole before his violation. In effect, he would be required to serve his sentence twice. Not only is this unfair and contrary to the philosophy behind corrections, but it is also illogical. If the man commits a new offense, he would be duly punished by the court for that new offense. If the violation were merely technical in nature, and no sentence is imposed, then does he deserve to be punished by years in jail for something that the law does not deem serious enough to punish? Clearly, the answer is "No."

Aware of this deficiency, the National Commission on Reform of Federal Laws—the so-called Brown Commission—established by Public Law 89–801, has recommended that the law be changed. In section 3403(3)(a) of the report, the Commission recommends that credit be given for the time spent on parole up to the date of the new violation. Illinois has followed this suggestion and has such a provision in the Illinois Unified Code of Corrections, section 3159(3)(i).

This change was also suggested in 1956 by the American Law Institute in the Model Penal Code, section 305.17(1). As the drafters of that section indicated, the preponderant rule in the United States is to allow a parolee credit for the time he has served on parole without violations.

At the present time, only 13 States and the District of Columbia have statutes, expressly prohibiting the crediting of such "clean time." They are Colorado, the District of Columbia, Florida, Idaho, Kentucky, Louisiana, Maine, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, Texas, and West Virginia.

The vast majority of States have taken the initiative and given credit for time served, on parole. Responsible and respected organizations have worked for such laws. The Congress now has a chance to become a part of this movement and give such credit in the two jurisdictions for which it has responsibility.

Under the provisions of S. 3674, a parolee would be given credit toward the running of his sentence for the time he spends on parole up to the time of a new violation. If the violation is serious enough to warrant his return to prison, he will have to serve any new sentence as well as the remainder of his original sentence, but he will not be forced to serve again that part of his former sentence which he has already served on parole.

Mr. Chairman, in conclusion, let me just once again thank you for your invitation to testify today. I have attempted to set out as fully as possible the need for a new look at our present system of criminal justice. The figures themselves present a very strong case for reform. The different experiments, projects and studies that I have cited all show that there are new ideas which could work in such a way as to serve both society and the individual offender. We in the Congress need to take the initiative and design a system where such programs can work in the best way possible. That is what I have attempted to do in S. 3185.

I look forward to working with the members of this subcommittee in the coming months and years in our continuing effort to ensure that the criminal justice system truly serves and protects society.

Thank you.

APPENDIX I

LISTING OF PROGRAMS DESIGNED TO BENEFIT THE CRIMINAL OFFENDER

Department or agency and program or program category	*Amount applicable to criminal offender—fiscal year 1971*
Department of Health, Education, and Welfare:	
Office of Education:	
Vocational education	$1,188,000
Adult education program	2,381,000
Title I of the Elementary and Secondary Education Act of 1965	19,100,000
Title II of the Elementary and Secondary Education Act of 1965	[1]
Teachers Corps program	1,502,000
Project Start	[2] 90,000
Drug education program	[1]
Nationwide education programs in corrections	400,000
Career opportunities program	112,000
Community service programs	29,000
Title I of the Library Services and Construction Act	[1]
Health Services and Mental Health Administration:	
Research on criminal behavior and on the sociology of crime	2,200,000
Supporting research and development—Corrections	2,100,000
Narcotic addict rehabilitation program	6,591,000
Training of social workers, psychiatrists, and paraprofessionals in the correctional field	5,167,000
Narcotic addict community assistance program	18,939,000
Social and Rehabilitation Service:	
Title I of the Juvenile Delinquency Prevention and Control Act of 1968	634,256
Title I of the Juvenile Delinquency Prevention and Control Act of 1968	2,530,000
Department of Labor: Offender rehabilitation program	15,900,000
Office of Economic Opportunity:	
Legal services program	[1]
Drug rehabilitation program	[1]
Volunteers in Service to America (VISTA)	[1]
Other programs and projects	[3] 5,410,950
Department of the Interior: Employment assistance program	200,000
Corps of Engineers: Rehabilitated offender program	6,300
Environmental Protection Agency: Physically handicapped program	[1]
Department of Agriculture:	
Extension Service	[1]
Forest Service	[1]
U.S. Postal Service:	
Job opportunity program	[1]
Postal academy program	[1]
Department of Justice:	
Law Enforcement Assistance Administration:	
Block grants under title I, pt. C, of the Omnibus Crime Control and and Safe Streets Act	[1] [4]
Discretionary grants under title I, pt. C, of the act	[5] 18,969,625
National Institute of Law Enforcement and Criminal Justice	2,100,000
Grants under title I, pt. E, of the act	[6]
Other bureaus:	
Rehabilitation of offenders	[7] 22,170,000
Treatment of narcotics and dangerous drug offenders	2,428,000
Federal Prison Industries, Inc	[8] 44,500,000
Judicial branch (Federal Probation Service): Services of probation officers	17,500,000
Department of Housing and Urban Development: Model Cities program	[1]
Total	192,148,131

[1] We were unable to determine the amount of funds being applied to programs or projects affecting the criminal offender. For more details, see app. II.

[2] This project was cofunded. The Office of Education contributed $75,500, and the Civil Service Commission provided the remaining $14,500.

[3] This total is a sum of the examples presented on p. 16 in app. II and is not to be considered all-inclusive.

[4] Pt. C includes estimated expenditures of $50,660,000 for correction and rehabilitation. Information was not available, however, to show how much of this money would be spent to benefit the criminal offender.

[5] Our analysis included only those projects interpreted as having direct impact on the criminal offender. Projects having indirect impact, such as research projects and studies, were excluded.

[6] The amount budgeted for pt. E was $47,500,000 for fiscal year 1971. Information was not available to show the amount of funds to be spent for projects to benefit the criminal offender.

[7] The amount includes $20,990,000 from the Bureau of Prisons. The total appropriations for the Bureau were about $74,900,000 for fiscal year 1969, $87,600,000 for fiscal year 1970, and $120,200,000 for fiscal year 1971. In this report we included only these funds that we could identify as being expended for programs and projects to benefit the criminal offender.

[8] This figure represents the total sales for fiscal year 1971. Net industrial profits were about $5,000,000. The Federal correctional institutions' vocational training programs are funded from these profits.

Senator PERCY. Also, Mr. Chairman, I would like to insert into the record a copy of a letter from Mr. Norval Morris, University of Chicago Committee on Studies in Criminal Justice, in which he strongly supports the legislation, and also a GAO report from the Comptroller General of the United States which I requested sometime ago to provide a basis for understanding what programs exist in this field. I think that the fact that it took the Comptroller General 7 months to pull together all of these programs and see where we were spending money in the field, is evidence that we have a lack of coordination that needs to be corrected.

I understand also that Congressman Railsback will be sending over a statement. Congressman Railsback has sponsored this legislation in the House as H.R. 13293 and I know it will be looked upon favorably.

Senator BURDICK. The letters that you have mentioned will be received, without objection.

(The letters above referred to follow:)

STATEMENT OF TOM RAILSBACK

Mr. Chairman and Members of this Subcommittee, it is a privilege to be able to testify on my colleague's bill, my good friend, the senior Senator from Illinois, Senator Percy. Mr. Chairman, Subcommittee No. 3 of the House Judiciary Committee, your counterpart in the House, has spent a good many hours in visiting different prison facilities, Federal, State, and local, all over the United States. I have the privilege of being the Ranking Republican on that Subcommittee and you heard from our chairman, Mr. Kastenmeier, this past Tuesday.

As Mr. Kastenmeier may have pointed out, our Subcommittee spent six months investigating our methods of incarceration and our approach toward rehabilitation. We visited jails and prisons in California, Wisconsin, Massachusetts, Illinois, Pennsylvania, and the District of Columbia. We talked to hundreds of prisoners, guards, and administrative personnel, and corresponded with hundreds of others. From the inmates, one issue—one concern—loomed above all others—and that is the arbitrary and often despotic powers of parole boards.

Inmates spend a great deal of time and psychic energy worrying about and preparing for the few minutes they are allotted before the parole board. This prompted the House Subcommittee to begin legislative hearings in February of this year on primarily two bills concerning the Federal and State Parole systems, H.R. 13118, Mr. Kastenmeier's bill and H.R. 13293, the House counterpart to S. 3185, which I introduced in the House. Since our Chairman, Mr. Kastenmeier, has discussed H.R. 13118, I will not repeat the contents of that bill except to say that the bill the Subcommittee will eventually come up with should be a very creditable piece of legislation and much of the credit for this should go to Mr. Kastenmeier for his distinguished leadership and legal scholarship.

The final product which our Subcommittee will report to the parent Committee very shortly adopts several of the important thrust contained in S. 3185. Essentially, the underlying premises of Senator Percy's bill are twofold:

1. to provide an institutional structure staffed by professionals (criminologists, sociologists, psychologists) whose primary interest is the well-being and rehabilitation of the offender, and

2. to provide the manpower necessary to evaluate how best the criminal justice system can meet the offender's actual needs.

The first premise deals with the structure of the parole system with its principal thrust on regionalization. Senator Percy, in testimony before the House Subcommittee, put it this way:

"By regionalizing the various aspects of this system, including the parole function, we can eliminate what I feel is the biggest liability of the present system. * * *"

I agree with this. I believe the Federal Government as a whole, must put more emphasis on the regional concept rather than have everything concentrated in

Washington, D.C. The responsibility as well as the physical location must be closer to the people. The current Parole Board is moving toward a kind of informal regionalization by the use of hearing examiners. Senator Percy's bill provides for approximately 90 district disposition boards and a circuit disposition board composed of an individual from each of the eleven Federal Judicial Circuits. The House Subcommittee has taken a different approach to regionalization. Under Senator Percy's bill there would be 90 separate district parole boards. There are however only 38 federal institutions. After considerable study, the House Subcommittee found that these 38 institutions could be divided in five or so regions with a separate board for each region with a small national board located in Washington, D.C.

The second premise on which Senator Percy's bill is based is manpower. Regionalization and manpower were very much lacking in H.R. 13118, although the House Subcommittee is restructuring that bill to include both. You know the statistics. Eight Board Members, assisted by eight hearing examiners, made more than 17,500 decisions last year. Since each decision requires the concurrence of at least two members of the Board, at least 35,000 individual decisions were made in one year. With this kind of workload how can the rights of society and the rights of the inmate be protected: All the reforms imaginable will be of no use if we failed to provide sufficient manpower.

Due process is expensive. The lack of due process is more expensive. A most important question to ponder is how can we as elected representatives persuade the American judge and lawyer and especially, the American people, to revaluate our present system of corrections? How do you tell the American taxpayer that our system of corrections—rarely corrects?—that our system does little to prepare the offender for his return to society, but does much to assure that he is hardened, embittered and hostile to society upon release. Any one who has worked and studied our criminal justice system knows that it was, and in some areas still is, characterized by neglect. Corrections is far and away the most neglected aspect of the system. What little money there is goes toward custody and big institutions. We are spending roughly 95 cents of every dollar on pure custody and pure custody tends to create new capacities for anti-social conduct.

Our studies have shown that the present system of parole is in need of reform *now* so it can function quickly, efficiently, and effectively. Your efforts can help to achieve that goal.

THE UNIVERSITY OF CHICAGO CENTER FOR STUDIES IN
CRIMINAL JUSTICE, THE LAW SCHOOL,
Chicago, Ill., July 27, 1972.

Mr. WILLIAM B. LYTTON,
Staff Assistant to Senator Charles H. Percy, U.S. Senate, Committee on Government Operations, Washington, D.C.

DEAR SENATOR PERCY: I have thought about your Bill S. 3185 and have discussed it in some detail with the forty senior correctional officials now attending the first executive training course of the National Institute of Corrections. In my view it is an important proposal, meriting careful legislative consideration and, in broad sweep, legislative acceptance. There is certainly need for a regeneration of effort and new initiatives in the federal role in corrections.

As a policy guiding group, the Federal Corrections Advisory Council would bring together the appropriate concerns and skills to steer federal national leadership in corrections. The functions you plan for the Council are ambitious but need to be achieved. Title I seems to me of unqualified value; the only argument being whether the same purposes could be better achieved by other organizational structures—and on that issue I can pretend to no expertise.

Titles II and III raise larger substantive problems. There is no doubt that the Federal Parole Board is at present hopelessly overloaded. The Circuit Board and the District Boards envisaged in your Bill could bring due process and even-handed justice to an important governmental function now characterized by snap decisions, unguided discretion, and an absence of evolving principle. The Bill would help to create an integrated, regionalized federal correctional service; the assumption of such powers over probation and parole supervisory processes are of particular importance.

I regret that my work for the first training course of the National Institute of Corrections precludes my attending the hearings of the subcommittee on S. 3185. I hope such an opportunity may come again. In the meantime, congratulations on the sound plans enunciated in this Bill. It could make of federal corrections what it has only in part been in the past—a model for state criminal justice systems seeking larger social protections against crime and firm yet humane justice for criminals.

Yours sincerely,

NORVAL MORRIS.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 1, 1972.

HON. QUENTIN BURDICK,
Chairman, National Penitentiaries Subcommittee, Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR QUENTIN: I want to congratulate you on the hearings which concluded last week on S. 3185 and other related bills. The testimony that was offered should be of great value to your subcommittee as you begin the task of synthesizing and formulating suitable legislation.

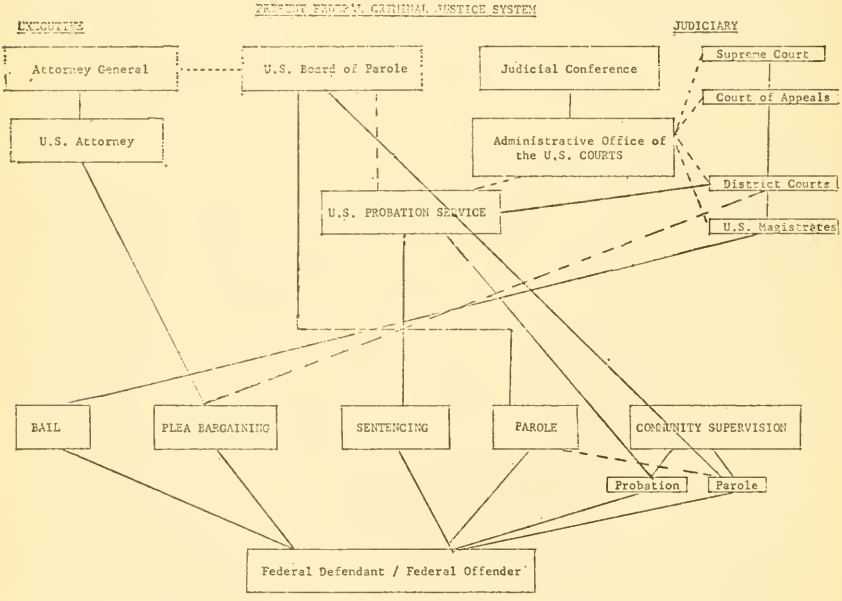
Because of some of the confusion during the hearings as to the precise structure that would be established by S. 3185, I have prepared two diagrams, one outlining the way the present system of criminal justice operates on the federal level; the other outlining the way the new system would operate under S. 3185. I would appreciate it if these two charts could be added to the hearing record.

Again, thank you for your courtesy and the courtesy of your staff in arranging for the hearings.

Warm personal regards,

CHARLES H. PERCY,
U.S. Senator.

(Enclosures.)



Review To Identify the Various Federal Agencies Operating Programs Designed To Benefit the Criminal Offender (B–171019)

(By the Comptroller General of the United States, May 17, 1972)

Comptroller General of the United States,
Washington, D.C.

B–171019

Hon. Charles H. Percy,
U.S. Senate.

Dear Senator Percy: In your letter dated October 28, 1971, you requested that we identify the Federal agencies operating programs which directly or indirectly have impact on the criminal offender once he has been brought into the criminal justice system. You expressed particular interest in programs which provided job training, vocational rehabilitation, and block grants to States, such as those administered by the Law Enforcement Assistance Administration, Department of Justice. You requested also that we identify the various programs in operation and the amounts expended for such programs.

In subsequent discussions with your office, it was agreed that our report would include information on those programs designed to benefit criminals after they had been apprehended and that programs dealing with investigative or police-type work would not be included. It was agreed also that we would obtain information on the Advisory Corrections Council authorized as set forth in the United States Code (18 U.S.C. 5002).

Appendix I is a listing by department and/or agency of the programs which we were able to identify as having an impact on the criminal offender. Appendix II explains the listing in more detail. In our discussions with your office, it was agreed that, when program costs applicable to criminal offenders were not readily determinable, we would use the best estimates available. We have not classified funds expended for enforcement and incarceration as benefiting the criminal offender. The Justice Department's Bureau of Narcotics and Dangerous Drugs and Bureau of Prisons are examples of agencies that expend funds for such purposes.

The information, which was obtained through surveys of the programs administered by the various departments and/or agencies and through discussions with responsible officials, shows that few programs are designed specifically to benefit the criminal offender. Rather, many of the Federal Government's social and economic programs have components which deal with criminal offenders either before, during, or after their incarceration. In a few programs, such as the Teacher Corps program, the component is specifically authorized by law.

In most cases, however, the components are carried out under the general legislative authority of the program.

We have been informed by the Department of Justice that the Advisory Corrections Council has not been active for at least the last 5 years.

We trust that the information furnished will be of assistance to you. We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

Elmer B. Staats,
Comptroller General of the United States.

APPENDIX I

LISTING OF PROGRAMS DESIGNED TO BENEFIT THE CRIMINAL OFFENDER

Department or agency and program or program category	*Amount applicable to criminal offender—fiscal year 1971*
Department of Health, Education, and Welfare:	
Office of Education:	
Vocational education	$1,188,000
Adult education program	2,381,000
Title I of the Elementary and Secondary Education Act of 1965	19,100,000
Title II of the Elementary and Secondary Education Act of 1965	[1]
Teachers Corps program	1,502,000
Project Start	[2] 90,000
Drug education program	[1]
Nationwide education programs in corrections	400,000
Career opportunities program	112,000
Community service programs	29,000
Title I of the Library Services and Construction Act	[1]
Health Services and Mental Health Administration:	
Research on criminal behavior and on the sociology of crime	2,200,000
Supporting research and development—Corrections	2,100,000
Narcotic addict rehabilitation program	6,591,000
Training of social workers, psychiatrists, and paraprofessionals in the correctional field	5,167,000
Narcotic addict community assistance program	18,939,000
Social and Rehabilitation Service:	
Title I of the Juvenile Delinquency Prevention and Control Act of 1968	634,256
Title II of the Juvenile Delinquency Prevention and Control Act of 1968	2,530,000
Department of Labor: Offender rehabilitation program	15,900,000
Office of Economic Opportunity:	
Legal services program	[1]
Drug rehabilitation program	[1]
Volunteers in Service to America (VISTA)	[1]
Other programs and projects	[3] 5,410,950
Department of the Interior: Employment assistance program	200,000
Corps of Engineers: Rehabilitated offender program	6,300
Environmental Protection Agency: Physically handicapped program	[1]
Department of Agriculture:	
Extension Service	[1]
Forest Service	[1]
U.S. Postal Service:	
Job opportunity program	[1]
Postal academy program	[1]
Department of Justice:	
Law Enforcement Assistance Administration:	
Block grants under title I, pt. C, of the Omnibus Crime Control and and Safe Streets Act	[1] [4]
Discretionary grants under title I, pt. C, of the act	[5] 18,969,625
National Institute of Law Enforcement and Criminal Justice	2,100,000
Grants under title I, pt. E, of the act	[6]
Other bureaus:	
Rehabilitation of offenders	[7] 22,170,000
Treatment of narcotics and dangerous drug offenders	2,428,000
Federal Prison Industries, Inc	[8] 44,500,000
Judicial branch (Federal Probation Service): Services of probation officers	17,500,000
Department of Housing and Urban Development: Model Cities program	[1]
Total	192,148,131

[1] We were unable to determine the amount of funds being applied to programs or projects affecting the criminal offender. For more details, see app. II.

[2] This project was cofunded. The Office of Education contributed $75,500, and the Civil Service Commission provided the remaining $14,500.

[3] This total is a sum of the examples presented on p. 16 in app. II and is not to be considered all-inclusive.

[4] Pt. C includes estimated expenditures of $50,660,000 for correction and rehabilitation. Information was not available, however, to show how much of this money would be spent to benefit the criminal offender.

[5] Our analysis included only those projects interpreted as having direct impact on the criminal offender. Projects having indirect impact, such as research projects and studies, were excluded.

[6] The amount budgeted for pt. E was $47,500,000 for fiscal year 1971. Information was not available to show the amount of funds to be spent for projects to benefit the criminal offender.

[7] The amount includes $20,990,000 from the Bureau of Prisons. The total appropriations for the Bureau were about $74,900,000 for fiscal year 1969, $87,600,000 for fiscal year 1970, and $120,200,000 for fiscal year 1971. In this report we included only those funds that we could identify as being expended for programs and projects to benefit the criminal offender.

[8] This figure represents the total sales for fiscal year 1971. Net industrial profits were about $5,000,000. The Federal correctional institutions' vocational training programs are funded from these profits.

Appendix II

Description of Programs Designed To Benefit the Criminal Offender

Department of Health, Education, and Welfare

Office of Education

Vocational Education.—Training programs provided by the States under the Vocational Education Amendments of 1968 include projects for inmates of correctional institutions. In fiscal year 1969 Federal funds in the amount of $550,000 were used to support the training of 18,000 inmates. In 1970 Federal funds in the amount of $775,000 were used to train 25,000 inmates. In 1971, 33,000 inmates were enrolled at an estimated cost of $1,188,000.

The nature of the programs varies considerably. Some States report that their penal systems offer education and training in many occupational areas, but education and training opportunities in the penal systems of other States are rather limited.

Adult Education Program.—An objective of the adult education program is to expand educational opportunities by encouraging the establishment of projects in correctional institutions that will enable adult inmates to continue their education, at least to the level of completion of secondary school, and to make available the means to secure training that will enable them to become more employable, productive, and responsible citizens.

Matching grants, based on an allotment formula, are made to States for adult education programs to be carried out by local educational agencies and private nonprofit agencies. In fiscal year 1969 the States expended $1,403,000 in Federal funds under this program to provide adult basic education for about 20,000 inmates; in fiscal year 1970, $2,061,000 for about 29,000 inmates; and, in fiscal year 1971, $2,194,000 for about 32,000 inmates.

Grants are also made directly to local educational agencies or other public or private nonprofit agencies, including educational television stations, for special projects which have national significance and which promote comprehensive or coordinated approaches to the problems of adult inmates who have not received high school diplomas, or the equivalent. These grants, which amounted to about $135,000 in fiscal year 1970 and $187,000 in fiscal year 1971, generally require a non-Federal contribution of 10 percent of the cost of the project.

Title I of the Elementary and Secondary Education Act of 1965.—The purpose of this title is to improve the educational programs of local educational agencies serving areas having concentrations of children from low-income families. The improved programs are to contribute particularly to meeting the needs of educationally deprived children. Some funds are provided to States and local agencies responsible for the education of children in institutions caring for both neglected and delinquent children. Total funds appropriated for the program and that part appropriated for children in institutions for the delinquent follow:

[In millions]

	Fiscal year—		
	1969	1970	1971
Total appropriation	$1,100	$1,300	$1,500
Funds for children in institutions for the dilinquent:			
State	12.5	14.3	16.4
Local	2.1	2.5	2.7
Total	14.6	16.8	19.1

Title II of the Elementary and Secondary Education Act of 1965.—This title of the act authorizes the Commissioner of Education to carry out a program for making grants for the acquisition of school library resources, textbooks, and other material for the use of children in public and private elementary and secondary schools. Grants are made to the States which, in turn, distribute the funds to the school systems. Some of the funds are provided to State and local agencies operating correctional institutions, but Office of Education officials could give no estimate of their magnitude. We have contacted two State depart-

ments of education—Texas and New York—and they estimate that about one tenth of one percent of their title II funds are provided to correctional institutions.

Total appropriation: *In millions*

Fiscal year 1969	$50.
Fiscal year 1970	42.5
Fiscal year 1971	80.

Teacher Corps Program.—This program is designed to improve the educational opportunities of poor children and to broaden teacher-training programs at colleges and universities. The Teacher Corps operates a corrections program which has the same overall objectives but which deals specifically with youthful offenders—adjudicated delinquents and socially maladjusted youths—in an institutional setting.

[In thousands]

	Fiscal year—		
	1969	1970	1971
Total appropriation	$20,900	$21,737	$30,800
Funds for corrections programs	112	210	1,502

Project START.—Project START is part of the Federal City College Lorton Project, a rehabilitation project for men either incarcerated in or paroled from Lorton Prison in Lorton, Virginia. Specifically Project START is designed to provide an opportunity for paroled men to obtain a college education while working as paraprofessionals for the Office of Education. The project began in fiscal year 1970 and is funded jointly by the Office of Education and the Civil Service Commission.

[In thousands]

	Fiscal year—	
	1970	1971
Office of Education funds	$75.5	$75.5
Civil Service Commission funds	14.5	14.5
Total	90.0	90.0

Drug Education Program.—The objective of this program is to help schools and communities assess and respond to their drug abuse problems. The program began in fiscal year 1970. Program officials told us that, in one part of the program—Community Projects—some rehabilitated addicts probably were hired as instructors; however, these officials could not provide us with any estimate as to the number of such people in the projects.

[In millions]

	Fiscal year—	
	1970	1971
Total drug education program	$3.6	$6.0
Community projects		2.2

Nationwide Education Programs in Corrections.—This program funds three centers that provide for the training of teachers (including Teacher Corps interns), administrators, and other staff members that operate treatment programs for juvenile delinquents and adult offenders. The fiscal year 1970 and 1971 appropriations were $150,000 and $400,000, respectively.

Career Opportunities Program.—This program, which began in fiscal year 1970, is designed to improve the learning of children from low-income families by employing high-risk persons as paraprofessionals in poverty-area schools while,

at the same time, providing these persons with the opportunity to obtain college degrees in education or to become qualified to teach in areas not requiring college degrees. The employed persons are those whose academic, family, and occupational histories hinder them in becoming assets to their communities. Program officials conservatively estimated that, nationwide, about 45 criminal offenders were enrolled in the Career Opportunities Program at an annual cost of $2,500 for each enrollee.

[In thousands]

	Fiscal year—	
	1970	1971
Career opportunities program, total	$19,400	$25,800
Cost for criminal offender enrollees	112	112

Community Service Programs.—Title I of the Higher Education Act of 1965 provides Federal funds to strengthen community service programs of colleges and universities. These programs are designed to assist in the solution of community problems, and several that have been funded deal with criminal offenders.

The New Dimensions project in West Virginia and the Credit Extension and Quinnipiac projects in Connecticut provided extension courses to inmates of penal institutions. The Speed Up Project in South Carolina provided training to inmates to enable them to obtain skilled employment. The Upsala Urban Extension project provided counseling for youthful and adult offenders in New Jersey.

Under title I the Congress appropriated $9.5 million a year for fiscal years 1969 through 1971. Of the total funds of $28.5 million, only about $29,000, $20,000, and $29,000 were applied to programs that dealt with criminal offenders during those fiscal years.

Title I of the Library Services and Construction Act.—This title provides Federal funds to assist States in the extension and improvement of public library services, including those of libraries in institutions. Office of Education officials told us that they did not know what part of the funds went to penal institutions. They said that the States made these determinations. The appropriation for title I of the act was $2,094,000 for each of the fiscal years, 1969, 1970, and 1971.

Health Services and Mental Health Administration

Officials of the Health Services and Mental Health Administration provided us with information that was sent to the Office of Management and Budget concerning National Institute of Mental Health programs for the reduction of crime. This data was listed under various program categories and did not identify the actual programs or projects involved. We analyzed the data on the basis of the descriptions provided in Office of Management and Budget Circular No. A–11 (pp. 87 and 88) for each program category. As a result we believe that the following categories, may contain programs or projects having some effect, either direct or indirect, on the criminal offender.

[In thousands]

	Actual outlays for fiscal year		
	1969	1970	1971
Research on criminal behavior and on the sociology of crime	$3,072	$1,585	$2,200
Supporting research and development—corrections	1,710	1,957	2,100
Special programs for the rehabilitation of narcotic addicts:			
Narcotic addict rehabilitation program	13,020	3,770	6,591
Narcotic addict community assistance program	2,409	3,057	18,939
Development of community resources:			
Training of social workers, psychiatrists, and paraprofessionals in the correctional field	3,334	5,167	5,167
Total	23,545	15,536	34,997

Social and Rehabilitation Service

The Rehabilitation Services Administration of the Social and Rehabilitation Service provides financial support and leadership for State programs of vocational rehabilitation. Each State administers and supervises its own program. Although individual States may provide some services to public offenders, there is no reporting by the State of the costs of this type of service. Federal grants to States for the cost or rehabilitation programs totaled about $500 million a year for fiscal years 1969 through 1971.

Among other things, the Youth Development and Delinquency Prevention Administration of the Social and Rehabilitation Service awards grants for rehabilitation, curriculum development, short-term training, and traineeship under the Juvenile Delinquency Prevention and Control Act of 1968. Details follow.

Title I of the Juvenile Delinquency Prevention and Control Act of 1968.—Under part B of this title, grants may be provided to encourage the maximum use of State and community rehabilitation services for diagnosis, treatment, and rehabilitation of delinquent youth and of youth in danger of becoming delinquent. It is hoped that, through these grants, a greater range of alternatives to traditional forms of incarceration can be provided, that the development of new facilities closely linked to the community can be encouraged, and that the establishment of new types of community agencies for dealing nonjudicially with delinquent youth can be supported.

Projects funded under this section of the act include: new juvenile court procedures that reduce the length of time between apprehension of the juvenile offender, court hearings, and disposition; the decentralization of probation and parole services to Youth Service Centers; the provision of alternatives to commitment, such as small-group homes; supportive services and counseling for adjudicated youths; and the use of ex-delinquents in operation of local programs. Rehabilitative service grants were funded under this title, as follows:

	Fiscal year—		
	1969	1970	1971
Amount of funds	$245,941	$1,099,916	$634,256
Number of grants	9	26	18

Title II of the Juvenile Delinquency Prevention and Control Act of 1968.—The purpose of this title of the act is to provide training for persons presently working in fields related to the diagnosis, treatment, or rehabilitation of delinquent or predelinquent youth, as well as for those preparing to enter this work. It also includes support for the counseling or instruction of parents to improve parental supervision of youth.

Assistance may be provided for training court volunteers, paraprofessionals, and youths themselves as additional manpower in combating juvenile delinquency. A summary of expenditures by types of programs in fiscal years 1969, 1970, and 1971 follows:

	Fiscal year—					
	1969		1970		1971	
	Amount	Number of grants	Amount	Number of grants	Amount	Number of grants
Curriculum development	$248,544	6	$190,799	6	$131,318	5
Short-term training	1,356,979	43	1,260,731	39	2,269,262	36
Traineeships	25,000	1	158,845	3	129,420	2
Total	1,630,523	50	1,610,375	48	2,530,000	43

Some of the costs listed above pertain to prevention rather than rehabilitation. A breakdown of the funds expended for prevention and rehabilitation would have required an examination of each grant document. Even then, however, the breakdown might not have been complete because costs could have applied to both categories.

Manpower Development and Training Act.—For several years the Department of Labor has conducted research, demonstration, and pilot projects under various sections of the Manpower Development and Training Act to learn more about the problems of criminal offenders in their training and job adjustment. Efforts include vocational training for inmates, an experimental pretrial intervention program, model projects for employment service offices, and a Federal bonding program.

Inmate training under the act is the joint responsibility of the Departments of Labor and of Health, Education, and Welfare and is undertaken in consultation with correctional authorities. The Department of Labor pays for administrative costs and stipends to enrollees, and the Department of Health, Education, and Welfare pays for course material and presentation.

During fiscal year 1970 and the first 6 months of fiscal year 1971, 63 vocational training projects having about 4,100 inmate enrollees were funded under the act at a cost of nearly $8 million. Most of the projects were in State institutions, but a limited number were in county and Federal institutions. About $10 million will be expended for vocational training projects in fiscal year 1972. Most of the projects provide inmate stipends, a part of which is held back by the institution and paid to the inmate when he is released to help cushion the postrelease adjustment period.

Offender Rehabilitation Program: In fiscal year 1972 the Department of Labor consolidated all activities relating to inmate training and bonding into an Offender Rehabilitation Program. In addition to the $10 million of fiscal year 1972 funds for inmate training about $19 million will be used under the Offender Rehabilitation Program for experimental projects and for the bonding program.

Under the sponsorship of the Department of Labor, the Federal bonding program has helped place inmate trainees in jobs after their release. Begun as a demonstration project under a 1965 amendment to the act, the program was aimed at a significant number of persons who had participated in federally financed manpower programs but who could not secure suitable employment because of police records. The number of persons actually bonded has been small, but for each the fidelity coverage was the key to obtaining employment.

Total expenditures for inmate programs are not readily available; however, the expenditures for inmate vocational training and for some of the research and development programs (including bonding) are shown below.

[In millions]

	Fiscal year—		
	1969	1970	1971
Training	$3.0	$5.1	[1] $13.7
Research and development	1.4	1.2	2.2
Total	4.4	6.3	15.9

[1] Included are expenditures for some demonstration projects.

OFFICE OF ECONOMIC OPPORTUNITY

Criminal offenders are permitted to participate in all programs that are authorized by the Economic Opportunity Act. Certain programs, however, such as Legal Services or Drug Rehabilitation, are directed toward providing certain types of service to juvenile delinquents or criminal offenders.

Legal Services Program.—The Economic Opportunity Act prohibits the use of Legal Services program funds for the defense of persons indicted (or proceeded against by information) for the commission of a crime, except where the Director of the Office of Economic Opportunity has determined, after consultation with the court having jurisdiction, that there are extraordinary circumstances requiring such legal assistance. This limitation does not apply to (1) representation of arrested persons before indictment or information, (2) parole revocation, (3) juvenile court matters, (4) civil contempt, and (5) alleged mistreatment of prisoners after sentence and incarceration. The Legal Services program was funded for $46 million, $53 million, and $62.1 million in fiscal years 1969, 1970, and 1971, respectively. Office of Economic Opportunity officials were unable to estimate the amount of Legal Services funds that were spent on criminal offenders.

Drug Rehabilitation Program.—The Economic Opportunity Act authorizes the Office of Economic Opportunity to develop drug rehabilitation programs for narcotics addicts and drug abusers. Although officials were unable to estimate the amount of funds expended on criminal offenders who were participating in the program, they indicated that criminal offenders constituted a large part of the program's participants. This program received financing of $2.5 million, $4.5 million, and $12.4 million during fiscal years 1969, 1970, and 1971, respectively.

Volunteers In Service To America.—The VISTA program, which has been transferred from the Office of Economic Opportunity to ACTION—a new Federal agency—has assigned volunteers to projects which provide assistance in helping criminal offenders to reenter society. ACTION officials were unable to provide us with an estimate as to the efforts of VISTA which were directed toward criminal offenders.

Other Programs and Projects.—Office of Economic Opportunity officials informed us of certain Office of Economic Opportunity-financed programs and projects that they believed were directed toward assisting criminal offenders. A listing of the projects provided to us follows. The officials informed us that, because of decentralized recordkeeping, they might not be aware of all projects for criminal offenders funded by Community Action Programs with locally initiated funds.

OFFICE OF ECONOMIC OPPORTUNITY PROGRAMS DIRECTED TOWARD CRIMINAL OFFENDERS

Program and/or location and objective	Financing for fiscal year— 1969	1970	1971
Project New Gate (6 locations):			
Provide education programs for inmates of correctional institutions	$706,370	$1,171,486	$1,167,357
Evaluation			299,949
Experimental youth program (8 locations): Assist disadvantaged inner-city youth in carrying out projects designed to prepare them to lead constructive lives	603,293	247,344	1,994,324
Motivational training, El Reno, Okla.: Provide prerelease preparation of inmates			14,000
Drug abuse research, Laredo, Tex.: Rehabilitate hard-core heroin addicts		70,639	63,312
Residential rehabilitation, Bridgeport, Conn.: Provide residential assistance for narcotic addicts		35,000	35,000
Drug counseling, Albuquerque, N. Mex.: Operate counseling center and treatment colony			30,000
Crime reduction and prevention, Washington, D.C.: Resolve offenders' grievances with correctional institutions			219,000
National Juvenile Law Center, St. Louis, Mo.: Assist in solving legal problems of juvenile poor			260,000
Bail project, San Francisco, Calif.: Arrange release of indigent prisoners	61,833	60,000	25,000
Chicago, Ill.: Prevent and control delinquency	665,528	575,171	575,171
Bail project, Paterson, N.J.: Provide employment and counseling program for probationers	127,000	126,899	
New Brunswick, N.J.: Provide social rehabilitation and other facilities to inmates of correctional institutions	108,000	119,790	119,516
Sacramento, Calif.: Assist ex-convicts in readjusting to life outside prison	42,688	28,200	40,000
Monterey, Calif.: Provide counseling to petty larceny offenders			8,000
Cincinnati, Ohio: Half-way house for parolees	38,240	35,429	37,000
Washington: Obtain bonding for ex-offenders			70,000
Long Beach, Calif. (2): Provide residences for female ex-convicts			56,136
Birmingham, Ala.: Provide counseling services for delinquents	90,918	96,284	90,000
Houston, Tex.: Provide counseling for troubled youths and their families	94,942	110,600	104,130
Massachusetts Correctional Institute, Walpole, Mass.: Provide prevocational and vocatinnal training for inmates			50,000
Seattle, Wash.: Aid the reintroduction of ex-felons into society			25,000
Metro Corps, Gary, Ind.: Develop jobs for youth-gang members	50,000	50,000	50,000
Winston-Salem, N.C.: Rehabilitate teenage violators and ex-convicts			21,000
Portsmouth, Ohio: Train delinquent youth			1,248
Project Jove, San Diego, Calif.: Assist persons released from prison		45,268	55,807
Total	2,588,812	2,772,110	5,410,950

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Employment Assistance Program.—The Bureau of Indian Affairs operates an Employment Assistance Program under which vocational training and employment opportunities are provided to Indians. Agency officials told us that Indians being released from prisons were given priority in obtaining assistance under this program. Expenditures for this aspect of the program were $120,000 in fiscal year

1969 and $310,000 in fiscal year 1970 and were estimated to be at least $200,000 in fiscal year 1971. The increase in fiscal year 1970 expenditures was due to the addition of funds from a Law and Order Program, which was primarily enforcement oriented, operated by the Bureau of Indian Affairs. Information was not available to show the amount of Law and Order Program funds that were applied during fiscal year 1971.

CORPS OF ENGINEERS

Rehabilitated Offender Program.—The Corps of Engineers established a Rehabilitated Offender Program in June 1966, to aid the criminal offender in making the transition back to civilian life. Under the program a person can be employed on a temporary basis for a maximum of 700 hours. After this, to continue employment, the person must take the civil service test to obtain a civil service rating.

In May 1971 six men were employed under this program, and the fiscal year 1971 cost was $6,300. As of December 1, 1971, the Corps had no one employed under the program. Officials of the Corps told us that they considered only one of the persons enrolled during May to a quality employee but that, when he had obtained a civil service rating, the Corps was unable to retain him.

ENVIRONMENTAL PROTECTION AGENCY

Physically Handicapped Program.—The Environmental Protection Agency operates a Physically Handicapped Program which is designed to hire the physically handicapped and, in general, to convert such persons who are in the welfare and nonproductive categories to productive members of society. This program, which costs about $400,000 annually, has some rehabilitated offenders enrolled.

DEPARTMENT OF AGRICULTURE

Extension Service Programs.—Although the education, home economics, and related programs and projects of the Extension Service are not designed specifically for criminal offenders, they could provide benefits to offenders. For example, if there is a women's prison in a county included in the home economics program, representatives of the Extension Service could make visits to the prison to teach sewing to the inmates.

Forest Service Program.—The Forest Service operates a part of the Job Corps program which is funded by the Department of Labor. Although some juvenile delinquents have been enrolled in this program by the Forest Service, the program is not designed specifically for such persons.

UNITED STATES POSTAL SERVICE

The Postal Service has no program which is specifically designed for the criminal offender. It does operate programs, however, in which criminal offenders might participate.

Job Opportunity Program.—This program has been in effect since 1968 and is funded by both the Postal Service and the Department of Labor. It is designed to help meet the social responsibilities of the Postal Service and the community by providing on-the-job training for various postal-type jobs to persons who would not be recruited otherwise because of economic or social disadvantages. Program participants are required to pass a job-requirement test within 1 year of entering the program. Participants are required also to attend remedial education classes on their own time. Education classes are paid for by the Department of Labor. The Postal Service pays the salaries of participants. The number of participants depends on postal employment needs. As of June 30, 1971, 361 participants were in the program. Persons guilty of minor criminal offenses are eligible for the program. Persons guilty of minor criminal offenses are eligible for the program. Persons guilty of major criminal offenses are not. Program cost data is not readily available.

Postal Academy Program.—This program has been in effect since 1970 and is funded by the Postal Service; the Department of Labor; and the Department of Health, Education, and Welfare. Postal employees recruit, motivate, and educate hard-core dropout youths, hoping that the youths will obtain high-school-equivalency diplomas and become productive citizens. Training is conducted in small storerfont schools. Part-time postal jobs are available to students during training. As of October 1971, 1,000 students were enrolled in the program. Fiscal year 1971 costs were $3.5 million. The estimated cost for fiscal year 1972 is $3.9 million

(55 percent to be contributed by the Department of Health, Education, and Welfare; 35 percent by the Department of Labor; and 10 percent by the Postal Service).

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

The Law Enforcement Assistance Administration (LEAA) has about four program areas in which funds can be expended to benefit the criminal offender. These areas are (1) block grants distributed to States pursuant to part C of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (2) discretionary grants awarded pursuant to the same part of the act, (3) funds awarded by the National Institute of Law Enforcement and Criminal Justice pursuant to part D of the act, and (4) block and discretionary grants awarded under part E of the act—grants for correctional institutions and facilities.

A summarization of the four areas follows.

Block grants under title I, part C, of the Omnibus Crime Control and Safe Streets Act.—LEAA's fiscal year 1972 budget estimates contained the following projection of fiscal year 1971 block grant expenditures by program areas.

Program area	Percent	Amount
Upgrading law enforcement	14.7	$49,980,000
Prevention of crime	7.0	23,800,000
Prevention and control of juvenile diliinguency	8.9	30,260,000
Detection and apprehension	24.9	84,660,000
Prosecution, courts, and law reform	6.1	20,740,000
Correction and rehabilitation	14.9	50,660,000
Organized crime	3.6	12,240,000
Community relations	3.7	12,580,000
Riots and civil disorders	3.4	11,560,000
Construction	7.1	24,140,000
Research and development	3.9	13,260,000
Crime statistics and information	1.8	6,120,000
Total	100.0	340,000,000

Funds are awarded under the block grant program to encourage States and units of general local government to carry out programs and projects to improve and strengthen law enforcement. The basis for an award is a State plan approved by LEAA. At headquarters, however, we were unable to obtain information showing the amount of funds in the aforementioned program areas, which are to be spent to benefit the criminal offender. The block grant program was allocated $24,650,000 in fiscal year 1969 and $182,750,000 in fiscal year 1970.

Discretionary grants under title I, part C, of the act.—The law authorizes 15 percent of the funds appropriated under part C of the act to be allocated among the States at the discretion of the Administration for grants to State agencies, units of general local government, or combinations of such units. Such awards may be made according to the criteria and on the terms and conditions determined by LEAA. Funds allocated to the discretionary grant program were $4,350,000 in fiscal year 1969, $32,000,000 in fiscal year 1970, and $70,000,000 in fiscal year 1971.

We made an analysis of the discretionary grants approved by LEAA from inception of the program in fiscal year 1969 through November 23, 1971, and found that approximately $25.4 million had been awarded for projects which, in our opinion, would have a direct impact on the criminal offender. The $25.4 million is composed of $189,141 for fiscal year 1969, $6,279,581 for fiscal year 1970, and $18,969,625 for fiscal year 1971.

In our analysis we did not include discretionary grant projects which we interpreted as having an indirect impact upon the criminal offender. Research projects, studies, and projects dealing with the training of criminal justice personnel are examples of such indirect projects.

National Institute of Law Enforcement and Criminal Justice.—The purpose of part D of the act is to provide for and encourage training, education, research, and development for the purposes of improving law enforcement and developing new methods for the prevention and reduction of crime and for the detection and apprehension of criminals. The National Institute was established pursuant to part D and received appropriations of about $3 million in fiscal year 1969, $7.5 million in fiscal year 1970, and $7.5 million in fiscal year 1971.

We made an analysis of the projects for which funds were awarded by the Institute during fiscal years 1969, 1970, and 1971, and estimated that about $2.1 million had been awarded for projects which could be interperted as indirectly benefiting the criminal offender. The projects were basically research projects and would probably not have a direct impact on the criminal offender unless the results of the projects were put into practice.

Grants under title I, part E, the act.—Under this program, which received its initial funding in fiscal year 1971, block grants of one half of the total part E appropriations are made to the States, on the basis of their populations, for projects in the corrections segment of the criminal justice system.

The remaining one half of the part E appropriation is allocated by the Administration at its discretion. In fiscal year 1971, LEAA distributed these funds to the individual States in the form of supplemental awards based on the State planning agencies' statements of planned usage.

Information was not available to show the amount of funds to be spent for projects to benefit the criminal offender; however, a breakdown of the types of programs to be funded and of the approximate amounts budgeted for these activties in fiscal year 1971 follows.

	Block grant funds	Discretionar grant fund
Institution innovation	$2,000,000	$3.000,000
Probation and parole	6,500,000	6,200,000
Institution planning and construction	5,700,000	6,400,000
Personnel recruitment and training	2,200,000	1,150,000
Community-based programs	6,000,000	6,300,000
Miscellaneous: Planning administration	1,350,000	700,000
Total	23,750,000	23,750,000
Total 1971 pt. E appropriation	47,500,000	

Other bureaus of the Department of Justice

Rehabilitation of offenders.—Prisoners confined in Federal institutions are provided correctional education, welfare services, connseling, psychiatric treatment, etc., to promote rehabilitation prior to their release. Considering and investigating pardon requests, as well as granting parole and supervising and recommending specialized treatment for parollees, are part of the services offered under the offender rehabilitation program. Bureaus operating such programs and the approximate levels of funding follow.

	Appropriation for fiscal year	
	1970	1971
Bureau of Prisons	$18,395,000	$20,990,000
Pardon attorney	136,000	141,000
Board of Parole	895,000	1,039,000
Total	19,336,000	22,170,000

[1] The total appropriations for the Bureau of Prisons were about $74,900,000 in fiscal year 1969, $87,600,000 in fiscal year 1970, and $120,200,000 in fiscal year 1971. In this report we included only those funds that we could identify as being expended for programs and projects to benefit the criminal offender

Treatment of narcotics and dangerous drug offenders.—Offenders who are addicted to drugs are given specialized treatment while in confinement, and upon release they are provided with community aftercare treatment and supervision to thwart their return to drug abuse. For this the Bureau of Prisons was appropriated $1,844,000 and $2,428,000 for fiscal years 1970 and 1971, respectively.

Federal Prison Industries, Incorporated.—Federal Prison Industries, Incorporated, a wholly owned Government corporation, was established to provide training and employment for prisoners confined in Federal correctional institutions.

Congressional authority establishing the corporation requires it to (1) operate a diversified program of industrial production to offer the least possible com-

petition to industry and labor, (2) restrict the sale of goods and articles manufactured in the corporation's shops to departments and agencies of the U.S. Government, and (3) provide a system of wage incentives and a program of industrial and vocational training so that inmates returning to society may be able to become more economically self-sustaining and productive citizens.

During fiscal year 1971 the corporation had sales of $44.5 million to Government agencies compared with $52.3 million during the preceding fiscal year. The corporation's net industrial profit for fiscal year 1971 was about $5 million compared with about $10 million for the prior year. The Federal correctional institutions' vocational training programs are funded from industrial profits.

JUDICIAL BRANCH

Federal Probation Service

Probation officers render service by making presentence investigations and by supervising probationers. They transmit copies of these investigations of offenders to Federal institutions to assist in their classification and treatment programs. Probation officers serve as liaison with inmates' families, assist in prerelease planning, and supervise offenders after release.

Besides the above-listed duties, the probation officers also assist with release planning and are responsible for parole supervision of inmates from military disciplinary barracks.

The total appropriation for fiscal year 1971 amounted to $17,500,000.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Model Cities Program.—The only Department of Housing and Urban Development (HUD) program which includes activities having an impact on the criminal offender is the Model Cities Program. Each of the 147 cities participating in this program have established projects which deal with a variety of activities and include economic development, manpower and training, and health care activities.

The Demonstration Cities and Metropolitan Development Act of 1966 established the Model Cities Program to improve the living environment and the general welfare of people living in slums and blighted neighborhoods in selected cities of all sizes in all parts of the country. The program calls for a comprehensive attack on the social, economic, and physical problems that exist in these cities, through the effective concentration of Federal, State, and local efforts. A typical model cities program will include projects to deal with education, health, social services, recreation and culture, crime and delinquency, manpower and job development, economic and business development, transportation and communications, and housing relocation.

Under the program cities are awarded supplemental grants by HUD to implement the execution phases of their comprehensive demonstration programs. These funds—which are to be used primarily for new and additional projects or as the non-Federal share required under other programs—are in addition to the resources available under Federal and State categorical grant programs and funds that are provided by local public and private agencies.

From inception of the program through June 30, 1971, about $1.7 billion was appropriated for supplemental grants. Of this amount HUD awarded grants totaling $1 billion, of which $375 million was expended by the cities. Of the total funds, about $50 million—$9.8 million in fiscal year 1969, $12.5 million in fiscal year 1970, and $27.7 million in fiscal year 1971—was expended for projects relating to crime and delinquency, as follows:

Research and development in the administration of justice.
Public education on law observance, law enforcement, and crime prevention.
Rehabilitation of alcoholics and narcotic addicts.
Prevention and control of juvenile delinquency.
Education and training of State and local enforcement officers.
General police activities.
Providing criminal-law advice and assistance.
State and local correctional projects.
State and local planning projects for crime reduction.

From the above, it is apparent that not all the projects funded with model cities supplemental funds for crime and delinquency purposes relate solely to criminal offenders that have been brought into the criminal justice system. Services and assistance provided under the Model Cities Program, however, include projects which deal with criminal offenders. Examples of several projects which fall into the latter category are described below.

Community Adjustment Services Bureau and Rehabilitation Project on Juvenile Delinquency (Norfolk, Virginia).—This is a project which serves juvenile offenders in lieu of traditional sentencing alternatives. Services provided under the project include counseling, employment and vocational rehabilitation, diagnoses and referral, and programs for youth involvement that are alternatives to the court process. Proposed funding for the project included $75,238 from model cities supplemental funds and $187,670 from Law Enforcement Assistance Administration and Department of Health, Education, and Welfare grants.

Halfway House for Adult Ex-Felons (Providence, Rhode Island).—This is a project which assists ex-felons, either in the prerelease or postrelease status, in their adjustment to society, through economic and vocational assistance. Specific objectives of the project include: (1) strengthening crime prevention and control by facilitating the change from the penal institution to society via the halfway-house concept, (2) providing a method for bonding ex-felons in order that they may gain meaningful employment, and (3) rendering counseling services geared to aid ex-felons in adjusting to society. The 1971 plans called for this project to be funded with $20,524 from model cities supplemental funds and an $85,505 Law Enforcement Assistance Administration grant.

Work Release Project (New York-Central Brooklyn-New York).—This is a project which provides for (1) creating a series of community-based rehabilitation centers for inmates, (2) coordinating the many rehabilitation services now operating in the community, and (3) increasing the supportive services available to offenders and increasing community involvement in the rehabilitation process. The project was to be funded from model cities supplemental funds for about $341,000.

Senator PERCY. Crime statistics compiled over the past 12 years indicate our efforts to control crime have been wholly inadequate. While our population rose 13.3 percent between 1960 and 1970, violent crime rose 142 percent and property crime rose 161 percent. But these estimates themselves are probably low since a number of important factors are excluded, such as embezzlement, tax fraud and price fixing—the "white collar" crimes. They are also limited to reported crimes.

The National Opinion Research Center estimates that the rate for violent crimes in 1965–66 was almost double that actually reported, forcible rapes almost four times the rate reported, and burglary more than three times the rate reported.

Mr. Chairman, the impact of these programs and statistics on crime will be unknown to us until we as elected officials develop our own deep interest through further personal knowledge. Let me cite an actual case. Yesterday afternoon I was in Champaign, Ill., and Mrs. Percy and I called on a young girl, 18, who had been raped just a few days before, forcibly raped at gunpoint by two young men. And while in the hospital, we learned of an 8-year-old girl who had recently been brutally raped and then murdered which has the whole county up in arms.

This is a rural community and this is in the heart of the farmland of America, and these are the kinds of crimes that they are dealing with.

Furthermore, only one out of every 70 reported crimes may result in an individual being charged, convicted, sentenced, and incarcerated. Those who are sentenced also reveal how much of a failure our efforts

have been. About 80 percent of all felonies are committed by repeaters, and about two-thirds of all prison inmates have been in prison previously.

This crisis is put sharply into focus at the Federal level. Perhaps no better example of a completely overburdened system exists than that of the U.S. Board of Parole. With a membership of eight, along with eight hearing examiners, the Board had authority over 20,687 prisoners in fiscal year 1970. In that year, the Board made 17,453 official decisions, each requiring the concurrence of at least two members. Thus, there were actually close to 35,000 individual decisions made by these eight men. In addition, the members and examiners conducted 11,784 personal hearings in prisons.

At the operational level, the burdens are also overwhelming. Six hundred forty Federal probation officers supervise 45,177 people, an average of 71 per office, twice the recommended level of 35. In large metropolitan areas, the caseload is over 100 per officer.

I am not an expert in the area of criminal justice. My background is in business, and in the years I have been in the Senate, I have tried to look at the operations of the Government from a commonsense point of view. Where a problem exists, a solution should be found; where the solution exists, it should be implemented.

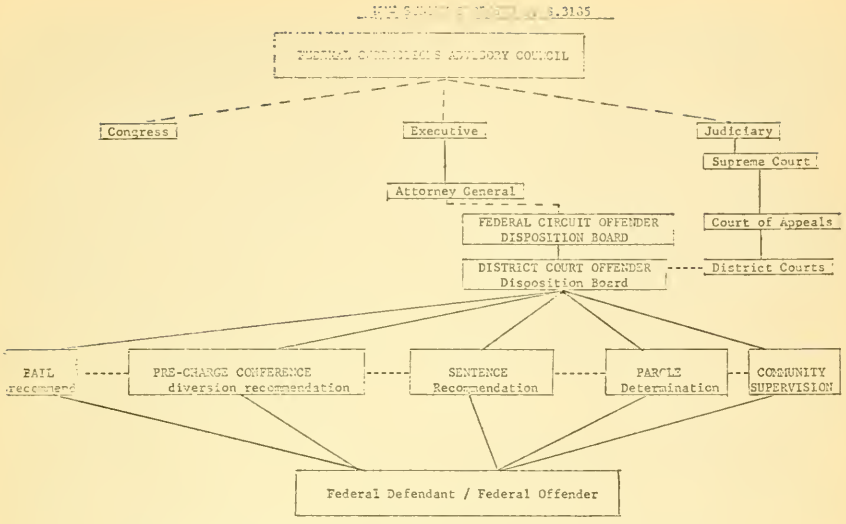
The President has given me the responsibility of introducing and managing four major Executive reorganization bills which are now pending before Congress. It seems to me to be entirely consistent to continue this effort to reorganize the Government in other areas where it is desperately needed. Certainly, there is such a need in the criminal justice system.

And I would like to point out my responsibility as the ranking Republican on the Government Operations Committee, which has an oversight responsibility over the Federal Government. We try to look at how we are structured now and define ways which would be much more efficient than a system which has gone topsy over the years.

For these reasons, Mr. Chairman, I introduced the Federal Corrections Reorganization Act (S. 3185) on February 17, 1972, along with Senators Brock and Montoya. This bill is an attempt on my part to reorganize those parts of the system of justice on the Federal level which have failed us in the past. The bill provides a new structure which will incorporate many suggestions that have been made, but which have never been fully implemented.

The major new reform is the structure that would be established. The new programs that would be provided have been suggested and tested by some of the most respected people in the field of criminal justice.

It should be kept in mind that this bill is an organizational bill. We are all certainly cognizant of the need to deal with the problems that foster and promote crime, and our efforts in this regard should continue unabated. But while we are working on these long-term problems, we should not ignore the problems presented by the failings of a system which should be redesigned to deal effectively with our daily problems involving crime.



TITLE I—FEDERAL CORRECTIONS ADVISORY COUNCIL

In 1950, an "Advisory Corrections Council" was established which was to "improve the administration of criminal justice and assure the coordination and integration of policies respecting the disposition, treatment, and correction of all persons convicted of offenses against the United States."

On paper, this Council sounded like a great idea. Unfortunately, however, it has remained only on paper for the last several years. While our crime rate has been skyrocketing and our system of justice has been staggering, the Advisory Corrections Council has not met for at least the last 5 years. No one is exactly sure the last time the members of the Council got together.

I might say here, Mr. Chairman, that we are in the process of reporting out of the Government Operations another bill that I have introduced which will abolish all Presidential advisory councils 2 years after they are established. To keep them, we would have to reinstitute them and put them back into being. I find hundreds of these boards are simply not operating.

Here we have a board on a chart some place which leads someone to believe that something is being done. But it really is nonoperative and it is simply a paperwork operation. On paper it looks fine, and in theory it is fine, but it is not working and isn't performing its functions as it is supposed to, and it hasn't even met for 5 years.

The role that Council is designated by statute to fill is an important one. Yet, today that role is not being adequately filled. In another organizational effort, in response to President Nixon's memorandum of November 13, 1969, the Inter-Agency Council on Corrections was established within the Executive branch of the Government.

However, I feel that more is needed. Certainly, there is a great need for coordination within the Government in this area. But it is the responsibility of Congress to take the initiative, and build on the present foundation to try to bring some order out of the chaos that now exists in our criminal system.

To illustrate how pressing this problem is, let me relate one experience that I had in this matter. I was interested to know exactly how much money was being spent by the Federal Government in programs designed to rehabilitate the criminal offender. This should not be such a complicated task. However, I found that no one knew who was spending how much, and for what. No one knew.

Consequently, on October 28, 1971, I requested the Comptroller General of the United States to initiate an investigation in an attempt to answer this simple question. The efficiency of the General Accounting Office is well known, yet, despite its efficiency, it took more than half a year from GAO to get the information. Seven months later, on May 17, 1972, I received the report of the Comptroller General. He had been able to identify 11 different Federal departments and agencies which were conducting programs designed to rehabilitate the criminal offender, programs that together were costing the Government $192 million a year.

The programs that the report identified were all worthwhile projects, but that is not the point. The point is that no one knew what the Government as a whole was doing. There was no coordination among these programs. We were spending close to $200 million a year in such a totally uncoordinated manner that it took more than a half of a year just to find the programs. If a business were to operate this way, it would be bankrupt.

The result of this inquiry, I believe, presents dramatic evidence for the need to have a coordinating body to keep track of all the various Government activities in this area, as well as the developments in the private sector, and to be able to recommend further steps to the Government. I believe that the Federal Corrections Advisory Council, established in title I of S. 3185, can be such a coordinating body.

It is about time that we stopped merely talking about the need for such a body, while allowing other such bodies to languish in the statute books, giving the appearance of oversight operations without any substance. We need to establish an effective body that will have the authority and responsibility of finding new solutions to old problems in a way that will truly serve the needs of today's society.

Title II—Federal Circuit Offender Disposition Board

In the operational phase of the criminal justice system, an overall authority is needed which will have administrative responsibility for the functioning of the new system established in S. 3185. At present, there is absolutely no uniformity in the way our Federal courts deal with offenders who are brought before the bench.

This lack of uniformity is most prevelent in sentences that are imposed by the Federal courts. For instance, in 1965, the average length of prison sentences for narcotics violations was 83 months in the 10th circuit, but only 44 months in the third circuit.

During 1962, the average sentence for forgery ranged from a high of 68 months in the northern district of Mississippi to a low of 7 months in the southern district of Mississippi. Despite our practical experience, I am sure that no one would challenge the verity of the statement that "Unwarranted sentencing disparity is contrary to the principle of evenhanded administration of the criminal law."

In workshop sessions at the Federal Institute on Disparity of Sentences, judges were given sets of facts for several offenders and offenses and were asked what sentences they would have imposed. In one case involving tax evasion, of 54 judges who responded, three judges voted for a fine only; 23 voted for probation; and 28 voted for prison terms ranging from less than 1 year to 5 years.

As a result of this type of experiment, judges themselves have attempted to resolve these discrepancies by coming together to study and learn of various sentencing techniques. While I think that this is a good start, it could be said that judges have more important things to do with their time than try to solve a problem that is inherent in the Federal system of justice. Their very great value is that of being individuals learned in the law. When we give them the added burden of attempting to deal with the problems of a disjointed system, it can only diminish their effectiveness.

The task of providing for a coordinated sentencing policy in the Federal judicial system should be given to a body that is better suited to that type of problem. Since the problem is national in scope, a national body is needed.

Title II of S. 3185 would establish a Federal Circuit Offender Disposition Board—the Circuit Board—to handle precisely this type of problem. The Circuit Board would set national guidelines for the imposition of sentences. This would not be a national body that just arbitrarily imposes its will on every judge in the country. Basic to an understanding of sentencing is that there will probably never be, and perhaps should never be, complete uniformity of sentencing. This would ignore the need for individualized, if not personalized, attention given to a particular offender by a judge. The Circuit Board, however, would help the Federal judiciary to function harmoniously as component parts of a coordinated system of justice.

In addition to setting sentencing guidelines, it would also establish guidelines for Federal courts in pretrial release, diversion in lieu of prosecution, probation, parole, diversion in lieu of incarceration, and incarceration.

Title III focuses on a regionalization approach. It established a "Disposition Board" in each of the 90 Federal districts. Each board would consist of not les than five members who have an appropriate background and expertise. They would be people who have the time and the training to give to each case the detailed personal attention that is necessary to safeguard society as well as to help the individual offender.

This title also focuses on the need for unification. The duties of the Disposition Board would extend beyond the traditional parole function. The board would be responsible for all the activities now being performed by other, diverse agencies.

For instance, the board would make recommendations to the court as to the type of bail to set immediately after arraignment. The board would recommend whether the defendant should be prosecuted or whether he should be placed in an alternative program.

If he is a chronic alcoholic or a drug addict, for example, it would be up to the board to recommend whether the individual should be treated medically or penally. If the person were found guilty, the board would recommend to the court the sentence it believes most

appropriate. The board by that time would have developed some familiarity with the offender because of the time it has spent with him from the time of his arraignment.

It would be the board's responsibility to suggest what to do with the convicted offender, and more importantly, if imprisonment were recommended, the board would state why he should be put in prison. The board would make clear whether we want to punish him, rehabilitate him, or deter others. Whatever the reasons, they would be stated.

In addition, the board would recommend the goals of such a sentence. No longer would a person be sent to prison with little or no idea of what is expected of him. The board would clearly set forth what a person must do in order to be released from prison on parole. In this way, the offender would always have a definite goal to shoot for, which in turn would provide the incentive to achieve those goals. Once having reached that point, the offender would be granted parole.

If the judge, at the time of sentencing, decided not to accept these recommendations of the board, then he would have to replace them with his own reasons and goals. Judges are always looking for better ways to determine sentences. I think that if we build into the system a process whereby they could always be assured of good service, they would take it. Nonetheless, a judge should be allowed the option of rejecting the advice as long as he is prepared to give indepth reasons for a particular sentence, and the goals the offender must attain.

The local board would also function as a parole board, holding annual hearings for each offender over which it has authority. Having gained familiarity with each case through long association with it, the board would be in a better position to judge how well a man is doing, and whether or not he should be released from prison.

The important point is that a local board would be the one to decide this vitally important question of parole, and not some group of overworked and understaffed men thousands of miles away.

If released, an offender would, as now, have to report to a parole officer, except that the parole officer would be under the authority of the local board. If the offender were placed on probation, his probation officer would also be under the authority of the board. This is quite different from the situation that exists now.

One man may be both a probation officer reporting to the court, and a parole officer reporting to the parole board. In either case, he is performing essentially the same type of function, but he responds to two different masters that may have two different philosophies. This is inefficient at best, and foolish at worst. The supervising officer should be under one authority; in S. 3185 he would be.

Mr. Chairman, I would like to add just a few words concerning S. 3674. I doubt anyone would deny the usefulness of an effective parole system. However, at present, both in the District of Columbia and in the Federal system generally, a situation exists which thwarts the basic purpose of parole. In these two jurisdictions, a parolee is sometimes given credit for the time he spends on parole toward the running of his sentence.

For example, if a man were sentenced to 15 years in prison, he would be eligible for parole after 5 years. If paroled at that time, he would be under parole supervision for the remaining 10 years of his sentence.

Once 15 years has passed from the time of the imposition of his sentence, he would be released from the jurisdiction of the court, and would be deemed to have served his sentence. In other words, though he was on parole for the final 10 years, the man would still be serving his sentence.

However, let us assume that after 9 years on parole, the man violated his parole. The violation could be either a minor technical violation or it could be a violation resulting from the commission of a crime. In either case, at the present time in the District of Columbia, and in the federal system, not only would that man be sent back to prison for the 1 remaining year, but he would also have to serve the 9 years that he had been on parole as well as any sentence imposed for the new crime.

As a result, he is given no credit for the time that he was on parole before his violation. In effect, he would be required to serve his sentence twice. Not only is this unfair and contrary to the philosophy behind corrections, but it is also illogical. If the man commits a new offense, he would be duly punished by the court for that new offense. If the violation were merely technical in nature, and no sentence is imposed, then does he deserve to be punished by years in jail for something that the law does not deem serious enough to punish? Clearly, the answer is "No."

Aware of this deficiency, the National Commission on Reform of Federal Laws—the so-called Brown Commission—established by Public Law 89–801, has recommended that the law be changed. In section 3403(3)(a) of the report, the Commission recommends that credit be given for the time spent on parole up to the date of the new violation. Illinois has followed this suggestion and has such a provision in the Illinois Unified Code of Corrections, section 3159(3)(i).

This change was also suggested in 1956 by the American Law Institute in the Model Penal Code, section 305.17(1). As the drafters of that section indicated, the preponderant rule in the United States is to allow a parolee credit for the time he has served on parole without violations.

At the present time, only 13 States and the District of Columbia have have statutes, expressly prohibiting the crediting of such clean time. They are Colorado, the District of Columbia, Florida, Idaho, Kentucky, Louisiana, Maine, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, Texas, and West Virginia.

The vast majority of States have taken the initiative and given credit for the time served on parole. Responsible and respected organizations have worked for such laws. The Congress now has a chance to become a part of this movement and give such credit in the two jurisdictions for which it has responsibility.

Under the provisions of S. 3674, a parolee would be given credit toward the running of his sentence for the time he spends on parole up to the time of a new violation. If the violation is serious enough to warrant his return to prison, he will have to serve any new sentence as well as the remainder of his original sentence, but he will not be forced to serve again that part of his former sentence which he has already served on parole.

Mr. Chairman, in conclusion, let me just once again thank you for your invitation to testify today. I have attempted to set out as fully

as possible the need for a new look at our present system of criminal justice. The figures themselves present a very strong case for reform. The different experiments, projects, and studies that I have cited all show that there are new ideas which could work in such a way as to serve both society and the individual offender.

We in the Congress need to take the initiative and design a system where such programs can work in the best way possible. That is what I have attempted to do in S. 3185.

I look forward to working with the members of this subcommittee in the coming months and years in our continuing effort to insure that the criminal justice system truly serves and protects society.

And I am very grateful, indeed, Mr. Chairman, for the counsel and advice that has been given me from the leading criminologists, by outstanding lawyers, by Norman Carlson, and others in the federal system with whom I have consulted, as well as by Mr. Peter Bensinger, who will appear as a witness before us today, the very able and enlightened Director of Corrections for the State of Illinois. He has given me an advance copy of his comments, and he supports in essence the legislation that I have proposed, and he raises two questions which I have now prepared an answer for, and I can simply answer verbally or I can simply insert it in the record following his comments.

And I have also incorporated comments and criticisms that have been raised by others in the testimony yesterday, so that the record will be as complete as possible.

Senator Burdick. Thank you very much, Senator.

Senator Percy. I am delighted to see Senator Mathias has joined us, and I would just mention, Senator Mathias, that the bill I am testifying on today is title V of the Omnibus Bill that we and a group of colleagues have submitted for consideration by the Judiciary Committee.

Senator Burdick. Thank you again. You are very comprehensive. It is going to be of great value to this committee.

There is no question about it that you have done some work on this. You have spent some time on it, and it is with contributions like this, Senator, that changes are being brought about in our attitude toward prisons. There has been quite a dramatic change in the last 5 years, and we have come to the realization that we are not doing a very good job, so we have to take new approaches. I think your approach is well worth considering in connection with the solutions we have to arrive at.

I just have two or three questions, two or three areas of your statement which you may want to amplify.

In 1932, the Wickershan Commission recommended that the supervisory case loads of probation officers should be 35 per man on an average.

Under the evidence we have had, the U.S. Probation Service for fiscal year 1972 shows that that case load was 76 persons, 76 per man. That is more than double the load than it was back in 1932. Considering the presentence report and everything else that the probation officers must do, considering those factors, the case load is, in fact, about 182 per man.

Now, the question, Senator, and also for my colleague who sits on my left, how can we find more money for personnel? How do we do it?

Senator PERCY. Well, I have served on Appropriations for a year and I, therefore——

Senator BURDICK. I didn't know that.

Senator PERCY. I will defer to my senior colleagues who have had much more experience. I have waged some winning battles and a few losing ones. I think they are men of reason, men of integrity, who want to see the system function, and I think we simply have to persuade them with the same force and argument that persuades our authorizing committee.

I hope the members of the subcommittee would not feel their job has been done if this bill passes. I have found in the housing field, for example, in the education and in public health, that I just couldn't end at that stage. I had to battle it all the way through to get every last penny I could get because the authorizing bills were worthless, valueless. They were false hopes and promises analyzing the process, filled with promises which were never fulfilled, and unless we actually funded those programs, there would be no value to them.

I can only say, Mr. Chairman, that I have and will bend my effort as much as I can, and now that I have been educated and am a convert, and a convert is the most zealous of all types of individuals, I would battle to find ways to get the funds to reform the system. Just as Senator Mathias and I actually went over and visited the Federal complex and court system to see the tangled mess that we have right here in the District of Columbia, which should be a model system.

We would see prisoners taken by handcuffs from room to room, juries and trial groups, and jurors being moved from building to building—the most inefficient system you could imagine. You cannot literally express it to an appropriations committee unless you physically and actually see it. And I think I have now talked with enough criminals—Mr. Bensinger made it possible for me to go in and see the enlightened programs that he has, and I have taken great hope from these, and I hope what we are doing at the State level now will be incorporated at the Federal level.

This is the value you have of the federal system of Government, and——

Senator BURDICK. I believe with your help and the help of other Senators like yourself, Senator Cook and others, that we will be able to provide a good bill. We will give good authorization, but the best bill in the world isn't going to do the job unless we do some funding.

Senator MATHIAS. Mr. Chairman, since you directed that question to me, let me say that Senator Percy and I have also cosponsored an omnibus bill which looks really to a fundamental form for the criminal justice system in this country, and I don't think we are going to get law and order or safe streets, or call it what you will, unless we can come up with some funds to get fundamental reforms in the system.

One of the better parts of that reform will be in the prison system and the rehabilitation. But we must remember that there is a price tag on it.

Senator BURDICK. I should say that there is.

Senator MATHIAS. It is going to cost—and I think it is worth every penny that it would cost on the bill that Senator Percy and I cosponsored. We authorized $1.7 billion for a beginning figure and I think

that is the kind of range that the Congress and the country have got to think about. And there isn't any short way to do it cheap. I think we both recognize that.

Senator BURDICK. But again, 40 years have gone by since the recommendation was made for more probation personnel. We have not received it in 40 years so maybe there is a little light in the tunnel.

Senator MATHIAS. I think we have to recognize the fact that the growing crime rates in that 40 years are apparently directly related to the—this failure.

Senator BURDICK. That is right.

On page 7, you refer to a pretrial diversion and I am very pleased to note that you are one of the sponsors of the S. 3309 bill, and I might advise you that District Attorney Seymour from New York was here the other day and he gave some very strong testimony and told us that the chances of giving rehabilitation to an offender was much greater before the sentence was imposed and the jail doors were slammed shut on them than afterward.

I think we can do a great job in this field if we just screen people, and if we have some procedure to do this by, and, in fact, I think in this method we can convert some of these people. And I think they announced some results and it is not for a long period of time, for 4 or 5 years, and I think we can make great headway there to convince these people, first offenders, young offenders—particularly the young offenders—we can do more for them than just sticking them behind bars and placing them in the company of hardened criminals. Would you agree?

Senator PERCY. I would agree.

Senator BURDICK. Now, we notice that on pages 9 and 10 you spent time justifying the causes for giving "street time," as we call it, where a parolee has been out on his parole for a period of time and thereafter violates that parole, that he should be credited with the street time. And there was considerable testimony this week in support of your position, and I think it has a lot of merit.

Senator PERCY. Providing that if he commits a crime, he has to pay for the full price for that new crime, and the judge will take into account that it is a second or third offense. But to go back and—particularly, for a technical violation, go back and serve every minute of the time he has been on parole, it just seems very hard indeed. And to the individual, I think one of the greatest problems is the bitterness which there individuals have toward the system.

The fact that they wait for 6 months, 7 months, beyond eligibility, and suddenly they are called in for 3 or 4 or 5 minutes before someone who is not totally familiar with the case, then they give them no reason—no reason is given for the decision made. They are just sent back. This is just causing a greater bitterness for the system, and this would just drive them off to another life of crime, which 75 percent of them do.

I think this simple justice will do more to say to the man—just like a young person—that he can work within the system. But they will rebel against it and be violently against it if they do not think it is a fair system. And they can find one way or another to do this, and the criminal feels even stronger than the young person about it.

Senator BURDICK. If the discretion of the judge who imposes sentence

is unchanged, how would your proposal change the presentence recommendation to the judge?

Senator PERCY. I would have to ask Mr. Lytton.

Mr. LYTTON. Could you repeat the question, Mr. Chairman?

Senator BURDICK. I will make it more clear for you.

Your bill provides for a recommendation from the Board in regard to sentencing, and the point I am making is, in practice, the judge now receives a presentence report. How would the findings of this board that you recommend, then, differ from the presentence report that is now given?

Senator PERCY. The board would recommend the reasons and the goals of the proposed sentence. In other words, here is the sentencing, the recommended sentence, but what we want to add to it is, these are the reasons that led us to come to this conclusion, and this is the goal that we are striving for by this sentence that has been imposed.

So, when the man walks away, at least he understands the reasoning that went into his sentence. At least it is not arbitrarily and dictatorily handed down, a "take it or leave it" thing. In fact, I was reminded just the other day of a civil rights case that was decided by a judge that I recommended to the Seventh Circuit Court of Appeals, and a lawyer told me that this is one of the greatest judges I have ever received a verdict from.

I said, what do you mean? I understood you lost your case. And he said, yes, but the power of the reasoning in which he explained how he came to his conclusion convinced me that, even though I am the lawyer for the defendant here, that this man was absolutely right in the way he reasoned it through. I regretted to lose the case, but I have high regard and respect for the court. And that is, I think, the attitude that we would like to have a little bit more of and that is what we are trying to add.

What any of us would like to expect—it is like our children if you give them an arbitrary decision, "You do it or else," the child will rebel. But if you sit down with the child and say that you made this decision now, and this is the reason why I made it, it changes their view and the chances are you are going to have a better performing child.

We are all, in a sense, children when we are dealing with our superiors.

Senator BURDICK. Would you tell the subcommittee how your plan for a board in each district of the Federal courts would operate, and some of the smaller districts, how would they be set up, and what is the cost of the operation? As you know, there would be 93 Federal districts plus the District of Columbia, and a district such as North Carolina today covers a large geographic area but has had only about 85 criminal cases in each of the past several years.

How would you justify cost in every district under your plan?

Senator PERCY. There would be approximately 450 people for all the district boards, and, of course, the justification is, what is our cost of crime today? I don't know what the cost of crime is—$30 or $40 billion a year—in the system that we have now. The system I am proposing is tremendous. But the question I am posing is, whether the system we have now or the one that is proposed is going to be effective?

Peter Bensinger will comment that it is possible to reduce that number, and I would say in some very small districts it would be possible

to set up a board of three men rather than, say, five, but I am just looking at the caseload. You see, if we unify the system instead of just handling the criminal from the time he is paroled, and that is all they do now, if they handled the criminal from the time bail has been established, all the way through the process, the caseload and the workload is going to be very great indeed, and it is just a question, like in welfare, how can you afford not to have adequate caseworkers? The cost is too much.

We now know that the price we are paying for society is not enough because all we are doing is perpetuating this and putting these people on welfare without any way of rehabilitating the people. And in this sense, it is the norm; it is in the end the most costly way to do it. And that is all we are doing. We are taking cases that should take minutes and we are taking hours, and we should have an intensive study on it and we should think it through rationally, rather than just going off the top.

This system is not working today and the system itself is the cause for a great deal of our crime, as shown by the 75 percent repeaters.

Senator BURDICK. Would you have any objection if some of these locations, some of these districts, the low-case districts—and there are quite a few of them throughout the country—be combined, to combine some of the States?

Senator PERCY. No; I would agree to that.

Senator BURDICK. Some of them could get the same service out of the amount of money; 85 cases in North Carolina would hardly justify a full office, a fully staffed office, and so forth. Whether you combine two or three of the Western States, you could then possibly have this system work. Would you have any objection to that?

Senator PERCY. Well, just using the figures here, last year, 640 probation officers had to supervise 48,765 people, plus conduct 27,558 presentence investigations. They would be free to do what they are trained to do if they had this proper supervision.

Senator BURDICK. Yes; but you see what I am saying. You have heavy areas, heavy caseloads, and others are light caseloads. So we might recognize that some of these could be combined.

Senator PERCY. I think that would be highly possible and, as I remarked, some of these boards could reduced from five to three members in certain of the districts.

Senator BURDICK. With regard to your comment about the need for balance of sentence, disparities, whether or not the statute specifically provides for this, it is one of the historic functions of parole and I am wondering how this could be accomplished on a case-by-case basis, with the paroling authority diffused among 93 separate courts.

Senator PERCY. I would think that it would simply come back then to the basic overall circuit board, which is established, as you know, by my title II, with the 11 members drawn from the whole cross-section of life and they would be establishing overall policy that would be available then, and spending their full time virtually establishing that kind of policy, with the implementation out in the districts.

Senator BURDICK. Well, again, thank you for your testimony, and now I will turn you over to your colleague from Maryland.

Senator MATHIAS. Thank you, Mr. Chairman.

I appreciate Senator Percy's testimony and leadership that he has brought to this national problem. I think it is significant that he shares

with Senator Brock, who testified before us yesterday, an extensive business background and I think we all agree that this makes available to them, and to us through them, an important perspective because unless the business community is going to cooperate in a new look at probation programs practices, we have very little chance of improving a situation which we have to agree is a failure today.

We talk about success or failure, I suppose, in terms of recividism, repeaters, and Senator Percy just mentioned the adult rate is around 70, 75 percent, but the forecast for the future is so frightening because the repeater rate among juveniles is tremendous, about 90 percent. And if that is the criminal class of the next generation which we are now seeing, the problems we have today are fairly conservative ones as to those that we may be moving into.

So I think Senator Percy's leadership is extremely important and I have a few specific questions.

If parole and probation are both supervised by the same personnel, the same corps of personnel, performing essentially the same functions, do you think there is any reason that they should not be united under one administrative authority?

Senator PERCY. I would think not.

Senator MATHIAS. At the present time, in your judgment, are the procedures adequately covered for those who should be considered as candidates for diversion instead of prosecution—alcoholics or drug addicts, who will have a reasonable chance for diversion—or would you agree that the procedure which is established in this bill, which has been recommended by the President's Commission on Law Enforcement, have a precharge conference? Do you think that would be a more effective way of considering pretrial diversion?

Senator PERCY. Far more effective, and it is in the spirit of everything we are now doing. The whole argument of the drug program that we put through, which really is a magnificent accomplishment by the executive and legislative branches of Goverment, since it took only 7 months from the time it was introduced, $800 million of funding, and in that case we had to fight for every penny of it. There is no question but the battle was waged in that 7 months—the drug abuse was looked at as a crime. People had gone into prison, people who are in military service, people in the military would be dishonorably discharged. They were almost ostracized from society, or do we treat it as an illness.

Here, the disposition board we would have established would have the time and be able to take the time to prescribe a medical remedy rather than just a remedy in the penal system which certainly is not going to rehabilitate a person that has an illness. So this is the only way I know—the only way I can think—to provide an organization to change the policies, the whole philosophy of the system, and to put emphasis upon rehabilitation rather than just emphasis upon punishment.

Senator MATHIAS. In the same general area, do you think the informal method of presentencing reports, which are very often submitted from overworked probation officers who are running faster and faster just to stay where they are, should be replaced by a more formal procedure of recommendation for sentencing before the judge?

Senator PERCY. Yes.

Senator MATHIAS. I think this comes to the chairman's question a little earlier of money——

Senator BURDICK. That is right.

Senator MATHIAS. But it goes beyond money, because money alone is not going to get the kind of people, necessarily, that you want. I think you mentioned a change in philosophy a moment ago. It means training, it means recruiting, it means getting the right people, giving them the right tools. While this costs money, it is something more than money. I think you have to bear this in mind.

Senator Percy, would the pretrial conference tend, in your consideration, go to plea bargaining, the kind of bargaining which does go on, I think, to the detriment of the whole justice system today?

Senator PERCY. Could you expand a little on the question?

Senator MATHIAS. Well, if you have a precharge conference——

Senator PERCY. In order to—the purpose of which is to speed up the backlog, and so forth.

Senator MATHIAS. Would you define the issue and make the definitions that we are talking about? I think you get away from one of the shoddy practices which we do see today.

Senator PERCY. I think I could explain what our objective is here. We are trying to see that in a precharge conference, we put our primary emphasis on how best to protect society, and what we are going to do with the individual before us. We clearly have the goals of how do we best protect society and how do we handle this particular individual. So the precharge conference, would, hopefully, replace the plea bargaining conference that now goes on. That is our goal.

Senator MATHIAS. I agree. I think this could, and it does reach out to that ultimate goal, which is protecting all of society.

Senator PERCY. Right.

Senator MATHIAS. The inmates—but more than the inmates—everybody that is out on the street today. I think this bill will move a long way in that direction, and we are very grateful for your help today and your continuing leadership.

Senator PERCY. I would like to make one observation which possibly I don't have to make—so it will not escape the committee—it does not escape the staff. I am also sympathetic to a person who is suddenly shaken up. We are all human beings, and if I come in my office in the morning and someone has moved my desk from one side of the room to the other because they happened to think it was a little more efficient over there—maybe it was, but I have gotten used to that desk being over there—and I would move it right back. And then I would find out who moved it.

The same thing goes on in the shakeup of the executive branch, the resistance to change is just horrendous. Everyone has gotten used to adjusting to the system. You might say, the lousy system, as lousy as the system, is, and they don't want it shaken up.

Here in the judicial system, it is even more rigid. There are vested interests built in to keep it exactly the way it is, despite the fact that if you had a company run that way, the losses would cause it to go into bankruptcy. Unfortunately, society keeps paying the price and we get used to these increased crime statistics.

In the 3 days of hearings, it has been very interesting to notice that of all the witnesses you heard these last 3 days, those who are

inside the system, a system that has a failure rate of 70 percent, are opposed to the reforms that would come about through S. 3185.

On the other hand, those who have testified who are not tied into the system but who have had to work with the system, who were able to objectively evaluate the system, to a man, have endorsed the new system in S. 3185. In this regard, I understand that Senator Cook said yesterday that he wanted to start from the ground up building a new system. This is very incisive, and I think we would have to conclude that you have to start over in some respects, that you can work with the present system to a certain extent, keep patching it up and trying to make it work, but the failures are so horrendous at this stage that we would really have to start over now and see what we can do to restructure it.

I think you can't have an effective working condition unless you have a restructuring of it. The value of the subcommittee in helping to chart that new course is certainly apparent, and you will find many ways to modify the suggestions that we have put in the bill. That is the purpose of these hearings. I hope my mind will be just as open to any suggestions. Just as many of the suggestions I have received have been incorporated in an effort to refine and improve the bill.

But I am sure the bill as it stands can be subject to even more change.

Senator BURDICK. One departing word, Senator. Your forceful and effective testimony has done some shaking up.

Senator PERCY. Thank you.

Senator BURDICK. Our next witness is Philip Hirschkop, American Civil Liberties Union, Washington, D.C.

STATEMENT OF PHILIP HIRSCHKOP, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON, D.C.

Mr. HIRSCHKOP. Thank you.

There is a prepared statement. I won't read it——

Senator BURDICK. Your statement will be made a part of the record at this point.

Mr. HIRSCHKOP. With your leave, Senator, I would submit a supplemental statement next week. I don't have one of the bills.

Senator BURDICK. That will be made part of your statement also.

(The complete prepared statement of Mr. Hirschkop, above referred to, follows:)

STATEMENT OF PHILIP HIRSCHKOP, AMERICAN CIVIL LIBERTIES UNION

My name is Philip Hirschkop. I am appearing here today on behalf of the American Civil Liberties Union of which I am a member of the National Board of Directors. I am also a member of the Steering Committee of the National Prison Project of the ACLU Foundation.

The American Civil Liberties Union strongly supports the objective of a number of the bills before this Subcommittee which seek to set standards and procedures to govern the grant and revocation of parole. My experience in dealing with the numerous prison disturbances around the country convinces me that parole, its availability and its loss, constitute a major, if not the major, irritant in our prison system. The secrecy and arbitrariness which mark the system often destroy whatever rehabilitative potential it has. The process must be characterized instead by openness, so that inmates are not isolated from these basic decisions which so fundamentally affect their lives. We, therefore, believe that the Subcommittee's efforts to improve the parole system fill an urgent need. With

certain exceptions, we believe that the Parole Commission Act of 1972, prepared by the Subcommittee staff, most adequately deals with the range of problems present in this area. We do, however, have improvements to suggest in the bill, some of which are drawn from S. 3185. A number of our suggestions appear at the conclusion of this statement. In addition, we would appreciate any opportunity to submit more detailed recommendations to the Committee at a later time.

Before summarizing our recommendations to the Subcommittee, it may be valuable to review briefly the procedures now utilized by the United States Board of Parole. (All figures are taken from the statement and report of the Administrative Conference of the United States furnished to Subcommittee No. 3 of the House Judiciary Committee at its April 26, 1972, hearings on Parole Procedures and Policies.)

The United State Board of Parole consists of eight members and employs a staff of eight examiners. It conducts about 17,000 proceedings a year relating to the grant or denial of parole, involving about 12,000 prison interviews, and close to 2,000 proceedings relating to the revocation of continuation of parole. The Board controls approximately two-thirds of the time actually served under fixed-term Federal prison sentences and all of the time served under indeterminate sentences.

Parole is ordinarily granted or denied largely upon information and impressions obtained from the prisoner's file and a brief personal interview with a Board member or examiner. Under present procedures the prisoner has no direct knowledge of what is in his file, and is only rarely given even some indication of the file's contents by the prison counsellor or the Board member or examiner. The primary document in the file is usually the pre-sentence report prepared by a probation officer, which is withheld from the prisoner or his counsel by the sentencing judge in the majority of Federal judicial districts.

The Board hearing examiner or, less frequently, a Board member conducts the parole "hearing" or interview at the prison. The interview is conducted, after examination of the file, without the prisoner, the prison counsellor and a stenographer present, and usually lasts 10–15 minutes although many last only 3–5 minutes. Counsel for the prisoner is not allowed. The examiner's recommendation is dictated after the prisoner leaves the room, but in the presence of the prison counsellor.

The examiner's recommendation is not made available to the prisoner. It is considered by a panel of the Board, consisting of two members of the Board who call in a third in the event of disagreement (which occurs about 30 percent of the time). The members consult together only in cases of difficulty, and, typically, simply note their conclusion in the file. Under recent practice the deciding members may grant a "Washington Review Hearing" at which relatives or counsel may supply written or oral statement, but this occurs in only a small portion of the cases (less than 1 percent). In cases of unusual difficulty or notoriety (again less than 1 percent of the cases), an *en banc* decision is made by a quorum of the full Board. Typcially advocates or opponents of parole appear before the *en banc* Board. Some notation of the reasons for grant or denial is added to the file after *en banc* consideration but usually not otherwise.

The reasons for Board action are not disclosed to the prisoner. Despite the requirements of public availability under the Freedom of Information Act, the Board's orders and opinions are publicly disclosed only when the Board determines this to be in the public interest.

The Parole Board has published a list of 27 factors which guide its decision whether to grant or deny parole. These factors point to the ultimate judgment as to whether release in the case of a particular prisoner is likely to lead to further law violation, with collateral attention to equalizing disproportionate sentences for similar offenses.

The parole system does not provide many of the procedural safeguards for prisoners that criminal defendants are universally granted during the trial process, or that parties to agency proceedings are commonly granted under the law of administrative procedure.

The Supeme Court has recently held in *Morrissey v. Brewer*, U.S., (No. 71–5103, June 29, 1972) that parole revocation hearings must be conducted in accordance with due process, much like a criminal trial. In this case, *obviously* with implications for parole granting, the court detremined that the Due Process Clause of the Fourteenth Amendment requires that a state afford an individual some opportunity to be heard prior to revoking his parole. The court then set forth the following minimum procedural safeguards:

1. Some minimal inquiry be conducted at or near the place of the alleged parole violation or arrest and as promptly as convenient after arrest.

2. This preliminary hearing to determine probable cause of a parole violation should be conducted and the determination made by someone not directly involved in the case.

3. With respect to this preliminary hearing, the parolee must be given notice of the hearing and its purpose; the notice should state the alleged violation; the parolee must be given the opportunity to appear and present evidence on his own behalf and persons who have given adverse information are to be made available for questioning in his presence.

4. The hearing officer shall make a summary of the evidence and must *state the reasons* for his determination.

5. There must also be an opportunity for a hearing, if it is desired by the parolee, prior to the final decision on revocation by the parole authority. This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or if he did, that circumstances in mitigation suggest the violation does not warrant revocation. The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody.

We recommend that any legislation include the *Morrissey* procedural safeguards, as well as the right to retained or appointed counsel, in *both* parole granting and parole revocation hearings.

Both the staff bill and S. 3185 recognize that the decision to grant parole must be made on the basis of a hearing in which the prisoner participates. This is essential to transform the current unfettered discretion into a rational and fair system.

Current parole practice places enormous reliance upon the good judgment and diligence of the members of the Parole Board. However, as we have indicated above, the "near-absolute-discretion" that has been judicially conferred on the Board is undesirable and unecessary. The usual rationale for distinguishing parole grant from revocation is that while the latter generally involves a question of fact, i.e. whether a parole condition has been violated, the former requires broad judgment. This distinction is misplaced. It is true that a variety of judgmental factors go into the initial decision to grant parole. However, the individual's need to insure the accuracy of the underlying facts is no different in either granting or revocation. The right to counsel, access to the information to be evaluated, the right to present evidence, and cross-examine witnesses insures that accuracy and completeness. Requiring the decision and the reasons to be recorded cuts down on arbitrary decisions and makes for more meaningful review.

Moreover, Board members reach judgments not only on individual parole cases, but they are allowed to prescribe the entire range of procedures and nonprocedures whereby over 17,000 decisions affecting the life, liberty and rehabilitation of federal inmates are made annually. There are no existing safeguards against arbitrariness; there is no way of knowing how rampant the "arbitrariness" is; and there is no way for a court to know whether the most basic violations of federal statutory and constitutional law have occurred.

This secrecy and arbitrariness cause tension, discontent and hostility among inmates and ex-inmates and defeat the concept of rehabilitation which purportedly is the basis of our correction and parole system. Creation of a system governed by due process of law should go a long way toward correcting this situation.

Another major source of problems is the area of "technical violation" of conditions of parole. Allowing revocation for conduct such as spending a night at a friend's house, vests too much arbitrary power in the hands of the parole officer and subjects the ex-inmate to the whims and caprice of the officer. Most important, they are inconsistent with the concept of rehabilitation as they inhibit the ex-inmate from fully rejoining the outside society. Legislative standards should eliminate their application.

One other problem deserves mention here. Currently, parolees get no credit as time served for the time between parole release and revocation. This in effect gives the parole board a judicial sentencing power which we believe is unconstitutional. Further, the rationale for this practice is that incarceration improves the prospect of rehabilitation and that serving more time better prepares the inmate to rejoin society. Not even most correction officials would claim today that

this rationale is in fact true. Full credit should be given for this period as time served.

We have a number of specific suggestions which would strengthen the Parole Commission Act of 1972.

1. *Parole Commission.* S. 3185 itself sets standards which guarantee that members of the Parole Commission are selected from "diverse backgrounds." A similar requirement governs the selection of members of the Advisory Council. It is well-recognized that the make-up of the current Board of Parole is too narrow. The staff bill, as presently drafted, would not correct this narrowness and would benefit from inclusion of those portions of S. 3185.

2. *Pre-trial diversion.* Under the current system, parole decisions are greatly affected by the decision-making which occurs during the pre-trial and initial sentencing periods. Title III of S. 3185 attempts to deal with this problem by requiring reports to be made on each individual who is arraigned for use during all steps of the procedures gainst him. Such reports, which will be available to defendants, will add a very important element of openness to the early decision-making process and to the subsequent parole process. These sections should be incorporated into the staff bill

3. *Standards for Parole Availability and Review.* As we indicated at the outset, one of the chief defects in the current parole system is the unrestrained discretion given to those who pass on a prisoner's eligibility. The staff bill attempts to correct this by setting standards for the grant of parole and the imposition of conditions (Section 4202). However, the standards themselves are so broad that they will permit continuation of the discretion which needs to be controlled. Similarly, the bill contains no real standards to limit the discretion of the Parole Commission or Regional Commissioners to modify parole decisions (sections 4201 (c) and (d) and 5005).

4. *Procedural Safeguards in Parole Grant.* Section 4203 guarantees the prisoner an appearance and the right to counsel. It should, as does S. 3185, also provide specifically that during that appearance the individual have a right to present evidence and cross-examine witnesses.

5. *Access to Report and Files.* Section 4203 attempts to deal with the problem of giving the prisoner access to files used to judge his case. However, the exceptions which it contains can swallow up the right of access entirely. The risk of inaccuracy and malice is too great, and the consequence too severe, to permit those broad exceptions.

6. *Right to Counsel.* The bill soundly guarantees an indigent appointed counsel in parole revocation. Similar provisions should be made to see that all prisoners have an advocate of their choice in the parole grant appearance. Inability to hire counsel should not force a prisoner to rely on prison-supplied "advocates" if he does not choose to.

In conclusion, we would like to compliment the Subcommittee for undertaking a study of this important area. As the country becomes more and more firmly committed to the rehabilitative approach to our penal system, the need for reform becomes clearer and clearer. Nowhere is the need greater than in the area of parole.

Mr. HIRSCHKOP. I have been heavily involved in a number of suits around the Nation involving prison conditions, and we are involved—and myself—in a number of prison strikes. We have seen a rash of those in the last few years, but they are publicized more than they used to be.

I was involved with one in Rayford Prison, where the prisoners were shot into by the prison guards. Several hundred State employees were involved. Several colleagues of mine were involved in that case.

In Attica and the prison strike in Richmond, I represented the prisoners. The reason that I bring these up is that what is common to all these strikes is the area of parole. The problem is probably the biggest single source of discontent in the Nation. And the one thing I would hope to add to these hearings, which has already been said for quite some time, is that the biggest single evil—this is the biggest source of frustration the prisoner has. It is the biggest source of brutality in prisons.

Senator BURDICK. May I interrupt you at this point?

I found the same thing, and one of the things they haven't heard is from the parole board. One thing is the delay in the hearing, things like that.

Mr. HIRSCHKOP. Well, it is not just that. It is an uncertainty. When a man or woman is put in prison, beatings are not uncommon, as many would have you believe. There are drip cells in some prisons, dark cells in some prisons. And Virginia had a rack up until 20 years ago. People in the last 2 years have been hung by their wrists in the Baltimore jail. They have been hung by chains against the bars in Virginia.

The penal system case that we tried last year showed this. But that is not the real evil. Those are to be condemned, but the worst brutality that you can bring upon these people in general, and that is nothing about when or how they will get out.

And with that, I ask the committee to visualize that day-to-day uncertainty of never knowing. It is the worst possible brutality. It is an emotional, psychological brutality of prisons in that respect.

The way the parole boards operate now—and I am addressing my comments beyond the Federal parole system, because whatever you do here will act somewhat as a model for the State parole system. In the average system, Federal and State, the person never knows. They don't know what they have to do to get out. They don't know what they have to do to please the parole board. They don't know what they have to do to conform to what standards.

They don't know what the standards are. They don't know what their records disclose. The day-to-day uncertainty is the brutality to these people and all you can do is transgress and try to imagine what that is really like in the present. This fear of being in prison, or being beaten. And many of these people are used to physical violence. This is what placed a lot of them there, and that environment, or that living pattern by themselves.

What this committee must do if a constructive bill is to come out, is to relieve that uncertainty. That must be the essential purpose of any bill that comes out of the committee. The remarks that we will address to the bill is that the American Civil Liberties Union and a number of attorneys involved with it are in favor of.

We ask the committee to give great weight to the *Morrissey* case, which the Supreme Court just decided, which I think has come up in the hearings a number of times. But we ask you to go far beyond the *Morrissey* case. You are not bound by what the Supreme Court heads said. It is the minimum required at this point by the Constitution.

Indeed, if the Congress had gone further before that, we think the Supreme Court would have gone further now.

Senator BURDICK. I am sorry; go ahead.

Mr. HIRSCHKOP. Yes, sir.

To begin with, a set of standards must be set down by which a prisoner knows where he stands or where she stands. When a prisoner goes into prison, they must know their time—when they are eligible for parole and what they must do to meet that eligibility standard, not vague standards, not just something to make you a better person, a person fit to return to society. That means nothing. That right to return to society in some certain programs means that you mustn't curse, you must observe certain religious standards which may or may not conform to society.

The position of the American Civil Liberties Union would be that that is not a requirement for being able to be free and come back to society, and yet we have seen parole boards with whom that is a major criteria. If a man attends Bible class, if a women attends sewing class—none of which really fit the rehabilitative process—to which experts will testify.

There must be set some criteria and it must be specific and it must be related to functioning in the society.

Secondly, the criteria must not be judged objectively by individuals who are subject to the complaints of the prisoners. Too often we have found that a superintendent will affect the parole. Now, for instance, in the State prisons, which again the Federal bill may well affect, there is such power in the superintendent as in no other member of society.

If you took an incident, for instance—an average type of citizen who gets 12 years for a burglary, a first offender, in order to give a sentence of 12 years a court has to review a huge package of rights. There must be a confrontation, a public trial, a right to counsel, a right to a jury, and a whole lot of things with which I am sure you are familiar. But there are two things in prison life that make that paraphernalia ridiculous.

First of all, as we look at "good time." Most States have it and the Federal system has it. After a person has served an average of two-thirds of their time, he automatically is released unless he must stay in prison as the good time is taken.

Second, there is the parole system, which is basically one-quarter of a time in most instances. In other words, when the 12-year sentence is given by the judge, really it is a minimal 3-year sentence until he would be eligible for parole, and a maximum 8-year sentence until he would automatically be released on good time.

Now, the prison superintendent in most States can, by a stroke of the pen, elongate that minimum 3-year sentence to the full 12-year sentence, taking away all the person's good time, and he can virtually deny parole by simply transferring a prisoner to a different section of the prison, which they call administrative segregation, without rights, because the prisoner wrote the American Civil Liberties Union. And there are other examples.

Now, that is not the case in the Federal system where it can be done, but still in the Federal system where superintendents can submit a letter to the parole board and the prisoner need never know what is in that letter, and he never has a basis to refute that letter. And the same thing, in effect, happened.

A superintendent in a Federal prison by a stroke of the pen can send a person—or keep a person from 8 to 10 to 20 years, which the courts need to give him all of his rights, to give him a minimal time for eligibility of parole. That power is a corruptive power of the prison. That is what we must all realize.

We have placed in the hands of one individual enormous powers. Now, regardless of how good a superintendent is—and you must realize that there are good superintendents and there are bad superintendents—but regardless of how good they are, that will corrupt them, that power. And I don't believe in experience in many prisons that I have been in—at least 25 or 30 States at this point, that any superintendent that I have ever met can handle that power reasonably over a long period of time.

It is only human nature, if a person is complained about, if someone writes to me and says, Mr. Hirschkop, the American Civil Liberties Union can help me. And say that person says the superintendent is doing a lousy job and he is going on rumors which might be unjustified, the superintendent is bound to be resentful. That is bound to spill out in a recommendation made to the parole board.

So you must remove that power. The superintendent must be taken out of the parole process which he now basically controls in most places, despite patrol. That is why, more than anything else, then, it must—if prison is to be meaningful at all—build due process at the parole hearings.

Now, that brings us to dichotomy we have in these bills. That is the difference between revocation and parole granting. Our position is that there is no difference. They effect the same emotional impact. When you get to it, how he is kept here or how he is kept back there, that is not relevant. The person is there.

If you take a man and woman and put them in a cage and say to them, we don't know when you get out, or something along that line, and say, you will never know until we let you out, you have committed the worst brutality that we think could be committed.

The greatest impact of that is more than I think we should ask any person to endure, despite the nature of the crime. The punishment of that far exceeds the punishment that you have voted into law in the criminal statutes. It far exceeds what was contemplated when you voted this into law.

We would encourage that there be no distinction made at all between revocation of parole and the means of granting parole.

One of the deficiencies in the bills is that they don't go far enough on this due process. We do favor strongly the decentralization. The problem with many State parole systems and the Federal parole system is that they are vested in the hands of a few individuals over other human beings, power greater than any human being is capable of exercising with the discretion that they are given.

Decentralization prior to the adjudicatory process of individual examiners will go a long way toward resolving. There should be records kept at every step. There should be decision written as to what, indeed, occurred and when it was rendered.

There should be unquestioned confrontation, the ability to call witnesses and to have cross examination, and this is in order to present documentary evidence. We believe there is, or should be much more than the Supreme Court mentioned in *Morrissey*, and that is the right to bond, the right to remain free unless there is good reason, good reason in law, to see that the person is incarcerated pending a parole revocation.

For instance, he should be given the same standards as applied to parole. We draw no distinction between the revocation of the parole and the initial commitment. The mere fact that a person has committed a crime sometime ago, and the crime has ended, the mere fact that he did so is irrelevant at the point of revocation.

These, basically, are the position we come up with. What is important—as I said, I will submit a supplemental statement on the exact due process but what is important is that the committee has to realize that the central theory should be kept in mind, that a person must know when and how.

The central evil now is the parole board and we get thousands of letters from the Federal systems alone, Lewisburg alone, we have gotten several hundred letters just in the past several months on this parole question. I have been passed over for 2 years. I don't know what I must do in the next 2 years to make parole. I have to please the parole board and I don't know how.

I have got to please the warden and he will please the parole board, and although I have a valid habeas corpus, I can't apply. Now, in many States if they file a habeas corpus, they will not consider them for parole. It is just the same as an administrative segregation. They will not consider them for parole.

And I might add that the law has not become part of the rehabilitative process. These are clubs by which we beat down prisoners into a greater absence for the legal system than originally put them in jail. If we are going to put them back into society, we must bring them back in the system. We must bring them back in a system of law and order, that they must live in.

These are the philosophies based on wide experience in litigation against prisoners that I have seen.

With regard to the bills themselves, we favor the staff bill, basically, the most recent bill. The Percy bill, we find a great deal of interest in, but we say that the staff must go beyond their present bill in adopting the same rights of the criminal defendant that he has in the court of law, and to the parole revocation, indeed, in the granting of parole, it is not a purely administrative process.

Those are my direct comments. If there are any questions?

Senator BURDICK. Mr. Hirschkop, you referred to the documents and files that were not available to the inmate on probation hearings. Could you comment on the argument that it would be necessary to exclude certain sensitive documents, or confidential documents from the inmate in the process of giving him access to the file?

Mr. HIRSCHKOP. I notice in the staff bill—that is at page 9—they do refer to that. I feel, and I think many of my colleagues who litigate prison cases widely feel with me that this is really a strong dramatic thing, very often presented by the prison administrator. Anything we discovered in these files was information not relating to these cases. This information is put in there to punish prisoners for valid action taken by the prisoners.

That is not necessarily what is referred to, such as the diagnosis reports of sociologists or psychologists who have treated the prisoners, and the feeling that this would be bad for the prisoners. We would not object to a synopsis of those, as suggested by the staff bill. However, the staff bill, as we read it, has the language of "any document in the file is ineligible to be given to the inmate unless it is determined by the prison administration that it can be."

That discretion should be in the prison administration. It should be in the hands of the people that are doing the paroling process. As far as reports of informers, reports of attempted escapes, reports of things like that—for instance, it is very common that you put people in solitary because they think there is going to be a prison disturbance and prisoners A, B, and C have been singled out by informers, and the informants are for the most part greatly unreliable.

Many prisoners who make up stories are trying to get favors with guards, and many guards who make up stories are trying to obtain a better face with the administrators, and they are just trying to get back at the inmate. That is that tug of war going on. Information like that should not be used unless it is used by both parties. It should be used by both parties and the inmate should have the opportunity to refute it. And there should be an honest tug of war like the adversary system is.

The experience that we have with the gross distortion in life, placed in prison records, is why the court records—and I refer to the *Royster* case of last year, by Judge Harry N. Richmond, U.S. district court—there must have been hunddreds of forged documents brought to light in prisoner files in that litigation. And gross documents, people who filed reports that the prisoners had done this, that, and so forth, and then they transfer him to solitary, and inadvertently they put the correct date and report days after the person was put in solitary.

The report was the basis for the transcript—that is indemnity.

Now, I must say I have one reservation, why I am being highly critical of prison administration authority. At least my experience—I don't know if we can all do it—they do an adequate job. The administrator and the guards do try to aid society, but the fault that is there is ours. We don't give them rules and regulations which govern them, and then it again comes to that abuse of power.

They are capable of doing the job for the great part. When we turn them loose, we get the abuses. And then it increases the need for the criticism which I have voiced in response to your question.

That is the fact that where we find so many documents inaccurate, and so forth, they shouldn't be held in secret, and this is at the discretion of the prison administrators themselves, rather than in the people in the parole judgment process.

Senator BURDICK. What do you do about a case like this: Suppose a man's wife gives testimony, honest testimony, to the official which would be very embarrassing to the inmate husband; as a matter of fact, it may wreck their marriage after he gets out? What about a statement like that?

Mr. HIRSCHKOP. It should either not be available to the parole people or made available to the prisoner, one or the other, because the other side of the coin is always present—a great deal of tug of war, especially in the marital relationship, man or woman who is incarcerated whose spouse is on the outside. There are many cases of infidelity, many cases of marriage breakups, many cases of bitterness, and a great deal of bitterness in that struggle. And how would you resolve the situation where the letter could be totally false.

A synopsis would not do, Senator. I submit the only way to remove the restriction, to remove the problem of the false letter, that you either have no letter or have it available to the inmate.

Senator BURDICK. If the letter is in the file and you are on the outside, what are you going to do about that?

Mr. HIRSCHKOP. The letter either should be taken out of the file or it should be made available to the inmate. In other words, that shouldn't go to the parole consideration process.

Senator BURDICK. What is your screening process? What do you recommend? How do you separate those things from the valid material?

Mr. HIRSCHKOP. We just had this with the attorney general of Virginia. This is one of the elements in the litigation that we have ongoing there. We agreed that the prison authorities themselves could remove from the file going to the parole board certain information, information from informants which they had to protect, that shouldn't go to the parole board.

What the parole board should consider is what and how things are considered today from the release of a prisoner, from a—from that consideration process, the process should not have that information available to them. It should stop with the prison file, and the mechanics are that they can maintain two files and one being the file available to the parole board, and the other being just an institution file to serve their assigned purposes.

Senator BURDICK. Then you get back to discretion again, don't you?

Mr. HIRSCHKOP. That discretion wouldn't be exercised, in effect, as to whether or not the person would be released on parole. That has separate evils involved.

Senator BURDICK. I understand that there would be some discretionary procedure there, whether or not that complete file was released to the inmate.

Mr. HIRSCHKOP. Yes, sir. What we maintain the purpose for these bills in this hearing is that any information going to the people making the decision on the paroles should go to the inmate.

Senator BURDICK. Many times a member of the prison administration also sits with the parole panel.

Mr. HIRSCHKOP. And he shouldn't have that availability to that type of letters either.

Senator BURDICK. Suppose the warden or one of the assistants is on the parole panel?

Mr. HIRSCHKOP. I don't think he should be.

Senator BURDICK. Somebody in the administration should sit on that parole to give some information to the people making the decision——

Mr. HIRSCHKOP. The bill——

Senator BURDICK (continuing). What is going to tell the parole board what his conduct was.

Mr. HIRSCHKOP. The bill allows for the panel authorities to make recommendations to the Parole Boards of what they feel a man's eligibility, or what his situation is, and they can make those recommendations without being a part of the process. It is very much like having the prosecutor sitting on the judicial panel in many ways.

If you have a prisoner who caused a great deal of embarrassment to them, there will be a natural reluctance on their part to see that he stays in this institution, and you must take that into account.

Senator BURDICK. At least we found an agreement here, that sensitive material that might affect a man's marital status should not be before the parole board.

Mr. HIRSCHKOP. If it is not shown to the inmate, it should not be shown to the parole board.

Senator BURDICK. That is one—would that be the same for a statement by a close friend?

Mr. HIRSCHKOP. By anybody.

Senator BURDICK. By anybody.

Now, you talked about due process and the parole proceedings. What about the problem of frivolous appeals and the undue burden on the courts, if an inmate is able to appeal from these decisions, all of these decisions?

Mr. HIRSCHKOP. Well, I think that the price is one that we will just have to pay to correct the abuses we have. I mean, we have frivolous appeals in the courts. Many criminal people who are convicted, they plead not guilty and they take an appeal, and they may not have much of a ground to appeal on.

Of course, the courts have built in—the circuit court of appeals, especially, they built in in the system a prior screening of an appeal, where they find ones without merit, they are kicking them out before it comes to the briefing and argument stage. I have not considered a full procedural method doing that before the parole board. I would think the best way to do it—the full procedure, to see how it works—we have that at all stages. One of the striking similarities of this bill and the proposed bill in the operation of the draft system——

Senator BURDICK. In the what?

Mr. HIRSCHKOP The operation of the draft system. We have local draft systems. They can appeal to the State board, and they can appeal to the Washington office. The administrative structure has that similarity and they get a number of appeals, but unfortunately the draft boards are as guilty as the administrative consideration of an applicant, because they give them a 2- and 3-minute consideration.

I think we have to just tolerate the frivolous people, and I think we have to tolerate the fact that a "guilty" may go free; some innocent person can get a bad trial. I don't think there is any other way of doing it. We are going to have to build in our system the full rights of everybody that is concerned.

Senator BURDICK. Despite the fact that our caseload is overloaded in most of the courts today, is there some way we can screen them, for example, in the pro se writs? You know that many of the writs are made out by the inmate who has had no legal experience. The room is provided for him, a few sets of books, and he writes out a writ. And probably it has no merit whatsoever, and yet they come in in volume. What do you do about that?

Mr. HIRSCHKOP. Well, I—recently—I don't have the statistics at hand—the Federal courts while complaining, while complaining the pro se habeas corpus, especially, they are a minimal amount to the time spent.

For instance, the negligent cases with the adversity of citizenship, the 10,000 jurisdictional questions, by far give much, much time than by taking the Federal habeas corpus rights out of those courts. The two don't have any amount of comparable time but we found other things. For instance, in a recent incident of the prisoner system of Virginia. We asked him about—in the biggest instance in Virginia, men in solitary, men restricted to confinement, do they have any law books? There happens to be no law books available, no legal assistance available, and he told us that if they have any problems they write you, Mr. Hirschkop, and I might say that I have 5,000 separate files that I have worked on in the last two and a half years.

We can do so much. We are overburdened, and there too few to take up that task and, indeed, we are weary of the task emotionally. You can only take so much of it. Now, if there was adequate legal assistance at that primary level, many of the pro se writs would be headed off and many of the pro se writs, though pro se, even though the legal system is giving advice, it would be so much better that the courts could more mechanically treat and decide the facts on the consideration of it.

I don't think that we need fear the breakdown of the administrative system by overburdening through the increased appellate procedure if we give the primary procedure at the trial level, the administrative hearing level, if we give them all the adequate rights that there are.

As I suggested before, one of the biggest deficiencies I find in the bills is the lack of standards that when a person, man or woman, gets into jail, they are told then that this is what you have to do to be eligible for parole. That is just a guessing game at best right now. That should be built in and it should be even further. I was very impressed with all of Senator Percy's testimony, especially the number of comments that go well beyond my prior testimony, and I think I am very sympathetic also, and that is, judges shouldn't be doing the sentencing.

The sentencing system, I think you will agree, is quite hard. It is quite as bad as the parole system. Now, what has happened in the parole system is so bad, so inept, that the judges do a better job. You must remember that the judges in Virginia, as in some other States, have jury sentencing, and it is pure pagan, sentencings are purely pagan. Why should a young man in one district who gets 5 years for his refusal for induction, and in another district he gets a suspended sentence altogether.

Senator BURDICK. Under the circumstances, I think you have merit to what you say. There are different circumstances on various charges.

Mr. HIRSCHKOP. Well, very often we can guess—as a trial lawyer, we can judge whether the judge is going to give a hard sentence, because judges give hard sentences on embezzlement. They each have their own passions and prejudices, and it is not to say that a sentencing board would not, but very often judges are ill equipped to do that. And I think it would be far better if a jail has any meaning, and if incarceration has any meaning, that incarceration be a program, because when Senator Percy said drugs involved sick people very often, he didn't go far enough. He should have said people in jail are sick people for the most part, because their crime is unquestionably an illness and should be treated as such.

The judge is not equipped to give this treatment. The treatment should be given by a special sentencing board. The parole board should not be judging after one-third of the time has been served. They should start to consider whether or not they will let you out—but I should say the minute you are put in, they decide where you are going and how long you stay there. There are evils in that. The sentencing process—that is what I am suggesting is an indeterminate sentence across the board, yet we have evil work in that.

In Virginia, we had a statute that a chronic alcoholic has 6 months in jail. After the Driver decision, the United States Fourth District Court, that person could only be sentenced to chronic alcohol rehabilitative purposes. They passed a progressive law that he can only be sentenced to an indeterminate sentence of 3 months to 3 years.

So what happened? The person who is drunk in public who pleaded to defensive chronic alcoholism would get a longer sentence. Instead of serving a maximum of 6 months, he has a maximum of up to 3 years, and most of them are sent up serving 18 months to 3 years. This is at the State farm, which is most brutal and the largest Virginia institution. An indeterminate sentence can be a great evil, and we filed lawsuits against it.

Then the State legislature repealed the law. If a proper board was constituted, a combination of the bail agency, the parole board, and they handle sentencing across the board, what you must ultimately look to is to take sentencing out of the hands of the juries, and particularly an individual judge, who have their own prejudices, who have their own built-in biases, who have gone through the trial that might have inflamed them.

This should be put into the hands of the psychologist and the sociologist who have been trained and are more suited to that function.

Senator BURDICK. Well, you have been very helpful today and I wanted to thank you for your testimony.

Mr. HIRSCHKOP. Thank you, Senator.

Senator BURDICK. Our next witness is Gary Hill, consultant, Crime and Corrections, United States Jaycees, Lincoln, Nebr.

Welcome to the committee, Mr. Hill.

STATEMENT OF GARY HILL, CONSULTANT, CRIME AND CORRECTIONS, UNITED STATES JAYCEES, LINCOLN, NEBR.

Mr. HILL. Thank you, Mr. Chairman.

Senator BURDICK. I am very pleased to know the Jaycees are interested in the proposed legislation.

Mr. HILL. The Jaycees are interested in anything that involves people: and this is a people question, very definitely.

In the testimony that has been prepared and submitted, there are two sections that I will not go into orally unless there are questions. We did ask immediately upon receiving our invitation to appear a little over a week ago, that two of our chapters located in the Federal penitentiaries submit testimony along with ours.

One is from the Trailblazer Jaycees in the Leavenworth Federal Penitentiary, and the other is from Marion, Ill. That has been included with my testimony, also.

Senator BURDICK. Your full statement will be made a part of the record at this point.

(The complete prepared statements of Mr. Hill, above-referred to, follows, together with the attachments thereto:)

STATEMENT OF GARY HILL

Mr. Chairman, distinguished committee members, when I received your kind invitation to testify a little over a week ago, I immediately contacted two federal penitentiaries where we have regular chapters of the United States Jaycees—one was in Leavenworth, Kansas (Trailblazer Jaycees) and the other in Marion, Illinois (Egyptian Jaycees). I asked both of those organizations to prepare any comments which could be included in my testimony and this information, as you will see, is later included.

Since I had such a short period of time to go over the pieces of legislation you sent me, I struggled a bit with what type of information should be presented. Obviously, by the nature of the five bills and the proposed legislation affecting

parole, the committee was already aware of the many problems and did not need a great deal of emotional information. But, on Monday while I was dictating this formal testimony, I received a letter from a gentleman serving time at the Federal Penitentiary at McNeil Island and I'd like to read part of his letter because I think it tells the background of what all of us are talking about.

It starts off, "Well, Gary, it looks like I have another year to do in this place. Last Friday at 3:50 P.M. I received the results of the Parole Board. Quote—Continue with a progress report July 1973—unquote. In our language, this means a one year (actually 13 months) set off. Yes, I'm disappointed but not discouraged.

I believe the only way I would become discouraged is if this 'thing' was to affect my friends (both inside and out)."

Let me skip down part of his letter where he says, "Why the set off? Really wish I could answer that, Gary, but I cannot. Although the Parole Board made its decision while my Mother and Rod Saalfeld (Vice President, Washington Jaycees) were in Washington, D.C. speaking with them the 11th of July, they did not tell them what their decision was to be, nor why. When I received the results, I asked why . . . but no answer . . . no reason . . . no nothing! Just—quote—I don't know—unquote. As you are aware, Bob Thornton is my Parole Advisor. We had everything, Gary . . . really, we didn't miss a punch (A.A. Degree with high honors, one of the Six Outstanding J.C. Presidents in the State, Five years inside, sentencing judge's recommendation for parole, D.A. says he didn't object, many, many letters of recommendation, institution recommendation (so they say), *four* job offers, *two* sponsors, *two* homes to go to upon release, acceptance at University of Washington with advance tuition paid (classes to begin Sept. 25th), I could go on and on. All of it to no avail. And what really hurts is, no one knows why."

I wish, gentlemen, that this was the only letter of this sort I had ever received and could call this an unusual case. Now I don't know if the man in question—if paroled—would have been the good super-citizen. But I do know that he was given certain criteria to meet and he met those criteria. We have documented through our association in over two-hundred correctional institutions in the United States (19 of which are Federal institutions) cases where men have gotten together with our outside Jaycees; and individual members of the outside Jaycees have become impressed with the particular individual member for one reason or another—usually through working closely with him on a common project. And the men have asked them for help in establishing parole plans.

Our people, as in the letter I just read, have gone to the Parole Counselors to make sure they weren't being 'conned' (because we are always told when we go into an institution that the man will want to 'con' us) and they have asked the Counselor "O.K., what does this man need to do in order to make parole. Where can we help?" We have contacted the judges who sentenced the man. We have talked to other members of the institutional staff to make sure all the procedure is properly followed, we get the supporting letters, help in acquiring jobs and housing and transportation, and then throw behind it the fact that they have many people in the community so that if the man wants to 'make it' they can make sure he won't be backed into a corner and will have community resources behind him. And then (as in the previous case) they submit all the proper information and the man goes up for parole.

We don't use political influence—we don't believe in it—nor do we think it has any place in the parole system. We merely follow the procedure that is given to us (assumedly the same procedure that is given to the man.) We meet all of the basic goals and everything that is laid out. Yet, time and time again, the word comes back that the man is set for a year—that parole is denied—and our people don't know why.

And then we contact the prospective employer who has guaranteed a job again or at least an interview who is told. "Gee, we're sorry—we'll try it in another year." I don't have to tell you that when you are attempting to encourage community resources to become active and helpful with a man being released from a correctional setting that if you must go to them and continuously change plans, it makes it extremely difficult to keep those same resources active and alive.

Speaking directly on the specific bills, Senate Bill Proposed 2383, 3185, 2462 and the rough draft for the legislation concerning parole as prepared by the staff of this Committee, they all have some excellent features. Rather than spending a lot of time, however, gentlemen, going over each of them and where in them I have particular questions or qualms, I would like to recommend that members

of your committee get together with the committee which helped prepare House Bill 1318. Now obviously, I'm a country bumpkin from Lincoln, Nebraska, and don't know if House Committees and Senate Committees are supposed to talk together or if pride of authorship keeps everybody separate; but I would ask that you look very seriously at HB 13118 with the thought in mind of combining some of your legislation with that particular Bill. It is probably the finest outline of a parole *system* that I have seen to date. I think you will find that it answers almost all the goals you attempt to set forth in your bills. There is one drawback to HB 13118 which I'll cover later. On Bill 2955, I must say that I do not support it for reasons which become apparent when I say that I am supporting Bill 3674. Bill 3647 is a Bill I hope will be passed *immediately* and that, if posscible, will be retroactive to all men currently confined. Bill 3674 answers a very important need not being met at the present time—that of allowing men to serve only the sentence imposed on them by the court, rather than having the sentence extended by not allowing the time on parole or mandatory release count for part of their sentence. I have enclosed a list of 12 men currently serving time, with a breakdown of when they were sentenced, the amount of time they have served either in the institution or on parole or (primarily in this case) on mandatory release, and the amount of time they have left to serve. I think you'll be shocked as I *used* to be at the number of men currently confined who have committed no additional criminal acts but have merely been returned to an institution for violation of a rule under which you and I do not have to live.

The attitude we have concerning men on parole is that we're not looking for a system that makes a man a 'perfect citizen'. We merely wish people to return to society and remain 'crime-free'. Crime-free, under the normal rules that everybody else must live by. And, if a man violates a rule of parole and does not commit another criminal act, we are more concerned that he be returned to the institution for some intensive care (if that's what the thinking is of the Parole Board at the time) and not punished because he happened to get married without permission or moved from one job to another without prior permission or had some drinks in public that did not lead to criminal activity.

Even though we are extremely interested in a Bill such as HB 13118, and a reorganization of the Parole system that better meets the needs of the individual as well as society, we feel strongly enough that the change is needed in the current laws and Senate Bill 3674 should be put through with a change in Section 4205, Title 18, of the United States Penal Code, just as quickly as possible, to alleviate the confinement of men past the period of time for which they were originally sentenced, when no further criminal activity has been committed by them.

The enclosed testimony from the Trailblazer and Egyptian Jaycees further indicates the types of legislation we are looking for. Though the Leavenworth Jaycees were kind enough in the beginning of their statement to indicate that their written testimony were their views and not mine, I would like at this time to tell you that I totally support their entire testimony and would hope you look at it as not just another statement from some convicts but with all the seriousness you might give to any regularly-chartered chapter of the United States Jaycees or other community oriented organizations.

I would also ask, gentlemen, that you consider the possibility of holding hearings within a Federal institution, such as Leavenworth or Marion or Lewisburg or any other you choose, in order to gain the insight and ideas of those men currently confined who have gone through the Parole system, many of them many times.

I will point out that the Trailblazer Jaycees at the Leavenworth penitentiary has a twenty-four man legislative committee which has been going over legislation for quite some time, have taken the time to contact many inmates, and might be able to provide good, comprehensive information for this committee and its use. I would further point out that to take everything the men 'under the gun' have to say as 'gospel' and to write it directly into law is not what we expect. Yet, not to listen to them would be to get only half the story prior to writing legislation.

As you will see from the enclosed information, we are extremely interested (and the United States Jaycees as an organization are interested) in the change of the current provisions of mandatory release under Section 4164, Title 18, of the United States Penal Code. The new legislation you are talking about would take care of that. Senate Bill 3674 would give *immediate* release until such time as your new legislation is drafted. Hopefully, your new legislation will be very similar to that proposed in HB 13118.

As I said before, there is only one portion of HB 13118 we find in need of improvement. That is the lack of definite guidelines for a man to follow in order to make parole. Therefore, I have enclosed, as drafted by members of the Leavenworth Trailblazer Jaycees, a copy of a proposed parole incentive plan to work in conjunction with a bill such as HB 13118 or your legislation. As you can see from reading it, it establishes some set guidelines a man follow so he knows what he must do to work his way out of prison and be acceptable in society.

In all the proposed legislation and guidelines I've seen to date, there is none quite so comprehensive or simple to administer as this particular plan; and I'm sure the details of the incentive points can easily be worked out.

Let me end my testimony with this, gentlemen. I am not particularly a do-gooder or one who believes that you must pat every bad boy on the head, pinch him on the cheek and say to him, "Now be a good boy and run along and play." If thumb-screws worked, I would probably be the first to recommend we bring back the whipping post and thumb-screws: but as we all know, these very old and even many of the very current approaches to working with offenders do not work if our goal is to keep the men "crime-free" as they adjust back to society. Parole is undoubtedly the finest single tool ever given to the correctional system to allow a man to phase back (under supervision) into society and at the same time keep him from committing any other offenses.

However, a parole system that is not based on equitable standards and which does not have built-in ties which help the community itself become involved with the individual is one as we've seen in the past that will not work to its fullest potential. Currently, the only thing a man can do to make parole is to be a "good prisoner" and there is, as we know, no market on the streets for a good prisoner. What's more, he can play the game of being a good prisoner just so long; pretty soon his peer group, the other inmates, decide that he's playing with the administration and is no longer a "good con." He can stay in limbo only so long before he must go completely over to the administration and live completely isolated or possibly in danger from his fellow inmates; or he reverts back to becoming an inmate's inmate—a solid con—at which time he starts playing a game that makes any help he might have received inside the correctional facility meaningless but also establishes in him a type of character that is dangerous to those of us on the streets who expect a man to be released and be able to remain crime free.

List of Inmates

The following inmates have been returned to, and are still serving "time" in the Federal Penitentiary for violations of rules under mandatory release. They were not returned for the commission of any new criminal acts. According to our figures they are a few of the approximately 2,400 men serving more time than they were originally sentenced for the same crime to which they were originally sentenced.

Number	Name	Sentence began—date	Original sentence	Time left to serve—as of	Amount of time over original sentence
71625–132	Atkins, G. A	Sept. 22, 1954	15 years	3,631 days, Sept. 20, 1968	9 years.
16666–149	Brittian	Apr. 12, 1967	3 years	393 days, Nov. 10, 1971	2 years.
83350–132	Castano, R. V	Nov. 1, 1966	5 years	607 days, Dec. 5, 1970	1 year.
71382–132	Charley, W	July 2, 1954	18 years	2,388 days, Dec. 5, 1970	5½ years.
87202–132	Dunn, A. H	July 6, 1961	10 years	1,428 days, Apr. 12, 1972	4 years.
78219–132	Fleming, F. A	Oct. 20, 1960	12 years	1,441 days, Aug. 16, 1970	1 year.
80462–132	Gibson, E	Aug. 3, 1962	10 years	1,331 days, July 14, 1972	3½ years.
78460–132	Grissom, H	Feb. 17, 1961	10 years	1,317 days, Feb. 18, 1971	3½ years.
80627–132	Hess, F. V	Mar. 27, 1963	7 years	838 days, Nov. 23, 1971	3 years.
60084–132	Jahn, R	June 11, 1942	25 years	1,536 days, Nov. 30, 1970	7 years.
81598–132	Johnson, A. A	July 20, 1964	8 years	972 days, June 30, 1971	2 years.
82318–132	Kruger, J. E	Mar. 1, 1965	5 years	620 days, June 19, 1971	2½ years.

☞Note: The court sentenced the above men for a set period of time—whether they served that time in a walled institution or under strict supervision on the streets, they were still serving that time. The number of years indicated in the right-hand column says that over and above the original dicates of the court—these men have not, nor will be citizens of the United States.

STATEMENT OF TRAILBLAZER JAYCEES

(Presented by Donny Montecalvo, President; and Bill Starnes, Associate Legal Counsel, Trailblazer Jaycees, U.S. Penitentiary, Leavenworth, Kans.)

Mr. Chairman, committee members, we, the Legislative Reform Committee of the Trailblazer Jaycees, United States Penitentiary, Leavenworth, Kansas, have asked the Honorable Gary Hill, Consultant on Crime and Correction, United States Jaycees, who was voted one of the Outstanding Young Men in America, to read the following statement into the record of this hearing. The views stated herein are the views of the Trailblazer Jaycees, not necessarily those of Mr. Hill.

We, the Trailblazer Jaycees, with the authority and consent of our membership want to go on record in support of H.R. 13118. Although not a total remedy, H.R. 13118 is the most comprehensive and far-reaching bill ever offered with a design for helping convicts become men who can see a light at the end of a dark tunnel. We believe that the major problems in the corrections field are being missed, and that in 80 percent, no, in 90% of the cases men released from prison leave in no better shape than when they arrived, and that is a real crime. But, we direct our remarks today toward the U.S. Board of Parole, and H.R. 13118.

The present parole system is one of the greatest travesties of justice ever pressed upon our society. The Board of Parole keeps their figures secret, or at least have lately, but reports say that they handle approximately 21,000 cases a year. We have done some figuring, and if the Board of Parole only handled 18,000 cases a year, the maximum time they could give to an average case is seven (7) minutes. Yet, they claim to make a decision upon full and careful consideration of the convict's entire record. The parole summary itself cannot be read in seven (7) minutes, or if it can be, it cannot be described as much of a parole hearing, when years of a man or woman's life are at stake. The Board of Parole claims to be able to adequately appraise a convict's record in five (5) minutes. We do not intend to insult this Committee's intelligence by even commenting on such an assertion.

Mr. Chairman, the American people are being deceived. Yes, we say the American people, because the tax dollars which go into the fruitless penal system, and the unjust parole system now in use could be used in a more productive way, with much better results. Those tax dollars belong to the American people. Prisons are not the answer, except in perhaps 10% of the cases now incarcerated, and those 10% need adequate psychological help, not necessarily prison.

Under the present system men in prison come and go, come and go, because they leave no better than they came. That cannot be blamed on the convict. He has no control over the programs. More handball courts, more movies, longer hair, or cakes in the commissary are not going to make useful productive citizens out of convicted persons. To reform an alienated man, you have to disalienate him. Strengthen his ties with normal life. You have to deepen his roots in the community. The present system devotes 90 percent of their resources to preventing such ties—to custody, incarceration, guarding. Less than 10 percent of funds go to education, training, experimentation with limited freedom, the kinds of things that create ties and roots.

On December 6, 1971, in his message to the first National Conference on Corrections, President Nixon said, and we quote:

"Are we doing all we can do to make certain that many more men and women who come out of prison will become law abiding citizens?

"The answer to that question today, after centuries of neglect, is no. We have made important strides in the past two years, but let us not deceive ourselves: Our prisons are still colleges of crime, and not what they should be—the beginning of a way back to a productive life within the law.", end quote.

Mr. Chairman, if prisons are in fact colleges of crimes, as the President says, and we must concede they are, the fault does not lie with the convict, but instead, with the administrators of the college, the present U.S. Bureau of Prisons staff. It is true that a man has to want to change before there can be rehabilitation, but a man cannot work for a change within himself unless programs are available to help him change, unless he is allowed to strengthen his family ties, and that cannot be done by six (6) hours visiting time a month as is had presently at Leavenworth, and unless the individual can have respect for the law and those who carry it out.

Mr. Chairman, you and the Committee hear lots of testimony about prisons, but we, the convicts directly concerned, say that our prisons will continue to be a failure as long as those who administer the corrections program, that is the

U.S. Bureau of Prisons, and the Board of Parole, strip prisoners of all sense of responsibility, and flaunt with total disregard the statutes of the United States which are now on the books. Of course, we hope for and are working hard for, speedy passage of H.R. 13118 and the abolishment of the present Board of Parole, and their unfair administration of policies.

We would like to give you an example of how the Board of Parole flaunts the law. Members of Congress have said time and time again that they are very much opposed to the denial of credit for street time which occurs when a parolee or mandatory releasee has their release revoked for some alleged violation of a parole rule. H.R. 13118 grants credit for time spent on parole or mandatory release, and we appreciate this section so clearly outlined in the bill, but we ask this Committee to listen carefully to what we say now:

Title 18, United States Code, Section 4205 in the present parole law says in pertinent part with regard to mandatory and parole release violators:

"The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time on parole shall not diminish the time he was sentenced to serve."

The Board of Parole extends the sentence of prisoners who are returned as a mandatory release or parole violator under this section of the statutes on parole. But all the statute says is that "time on parole shall *not diminish the time* * * * *sentenced*". The section says nothing about lengthening a sentence, which is what the Parole Board does. The Board of Parole contends that this section of Title 18 gives them the authority to deny credit for street time of alleged mandatory release and parole violators. The Board contends that after revocation, in addition to serving in prison the time he had left to serve on parole, a prisoner whose parole or MR has been revoked must serve a day in prison for every day he has served on parole. It argues that because parole or MR was subsequently revoked the time already spent on parole cannot be counted as time in custody of the Attorney General pursuant to sentence.

But the Parole Board, as a matter of course, does credit time on parole as serving of the sentence when there is no subsequent revocation of parole. And so it must under the statute! The basis for this legislative requirement is that parole constitutes a form of custody: revocation resulting in full imprisonment is a mere change in the form of custody.

Again, Section 4205, says in part:

"The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, . . ."

The question must be raised as to how can Section 4205 of Title 18, return a prisoner, who has violated a parole or mandatory release rule, to a custody which he has never left? A convicted person is committed for such term of imprisonment *as the court shall direct*, to the custody of the Attorney General of the United States (Section 4082, United States Code, Title 18). A parolee or mandatory releasee is released on parole in the "legal custody": that is what the statute says, "*legal custody and control of the Attorney General while on parole*" (Section 4203, United States Code, Title 18). How then can a violator be returned to the custody of the Attorney General when he was sentenced to, and paroled in, the *legal* custody and control of the Attorney General? Parole is custody. The statute says it is so; the United States Supreme Court has said it is so, and no member of the Bureau of Prisons, or the Board of Parole can show otherwise, yet they claim that they return a man to a custody which he has never left, and then illegally lengthen his sentence.

There is a situation where a man on mandatory release or parole can abscond supervision, and he thus places himself in the same status of an escapee, and should be so treated. However, the majority, 66⅔ percent according to the American Corrections Association, are returned as a violator for breaking of some rule, not for commission of a new crime or absconding of supervision. These thousands of men have their sentences illegally lengthened by the Board of Parole, and no one will raise their voice to question the Board of Parole on this question. The voice of a convicted person in the Courts, or even in Congress, is normally the voice of one crying in the wilderness. They cannot be heard.

I have here a booklet issued by the U.S. Board of Parole, titled "You and the Parole Board". It is dated, January 1, 1971. On page 11, of this booklet, at Question 37 we can read:

Question: "If my parole is revoked, how long must I stay at the institution?

Answer: "You cannot be detained after the expiration of your sentence,"

Obviously, the Board of Parole says one thing, and does another because the facts show that the Board of Parole and the U.S. Bureau of Prisons has detained thousands of men after the expiration of their sentence, and is at this very moment detaining hundreds of prisoners illegally. Insasmuch as these prisoners are poor, indigent persons, with no way to produce an adequate defense on presentation in Court, this question goes unanswered. If you will excuse the expression, the Board of Parole speaks with a forked tongue.

We raise this point to ask why do those in Congress who have had this called to their attention ignore it? Is it true that convicts are third-class citizens, considered sub-human, and that society does not care how they return to society? If this is the case, there is no hope for a reduction of crime in America, or for the rehabilitation of those who are incarcerated, or who will be incarcerated in the future. It is going to remain a hard task to expect convicts released from prison to become respectable, responsible citizens, until society begins to be responsible about what goes on in prison. We have digressed, but feel that this point must be made.

With regard to H.R. 13118, we would like to say that we find only one glaring fault in it. That is the tragedy of lack of parole criteria. What does a man have to do to earn a parole? If parole is to be granted, a man should earn it, he should know what is required to do so. That is an unanswered question today. All the good intention of Congress which are reflected in the bills which are now being offered to make the prison system more workable are for naught unless a man has a goal. Upon being committed to prison a man must know what is expected of him in order to earn parole. As Justice Burger recently told the first National Conference on Correction, a man should be able to earn his way out of prison. We agree with that. There must be an incentive factor if there is to be any imprisonment. Good behavior itself should not be the sole factor in deciding parole. The alleged purpose of the Bureau of Prisons is to correct the offender. As President Nixon says, The Bureau of Prisons is a failure.

We urge those who draft bills to consider carefully the wording of their bill because of the opportunity for abuse of discretion.

We have already discussed how the Board of Parole is abusing their discretion, and in so doing are holding hundreds, perhaps thousands of prisoners illegally. We have shown here how an Administrative Agency has completely usurped the powers of the judiciary, and is now extending prison terms in violation of every right and protection under the Constitution and Laws of the United States. There are numerous men at Leavenworth who are far past their ten, fifteen, even thirty year sentence, as imposed by the sentencing court, and they have received no additional sentence. There is a cry in the land that the prisons are overcrowded. Release those who are illegally detained and there will be considerable room quickly. These prisoners are in fact in perpetual servitude.

We also urge the writers of bills to closely look at conditions that go into deciding parole eligibility—the consideration of past criminal records—the presentence investigation, etc. Most of this material is strictly hearsay. Yet, all of these factors affect human lives for many years and can be a source of fierce embitterment.

Another point to be considered is that the myth for too long has been that the federal procedure should be the guidelines for change. That fact is, the federal procedure in prisons is far behind some of the more enlightened states, such as California.

The handing out of funds by the federal government gives the impression of success. The fact that the federal government stands ready to dole out money creates the impression of perfection, and, "we'll show you how." This is a myth which must be eliminated.

In closing we add one important question. When writing laws which affect prisoners, why not go directly to the prisoners in the prison for hearings? You can line up every Warden in the United States and they cannot really tell you about the needs of prisoners, because they have never been a prisoner. Even though the administrators will not admit it there is an invisible wall between the keeper and the kept. The keeper works at keeping that wall up, not the kept. We would like to knock that wall down. It would be easier for us than for the keeper, because they think they have the answers. There is nothing worse in the world than someone with out actual experience who can tell you what is wrong about something. A Warden knows about as much about being an inmate and his needs, as he does about being an Astronaut and their experiences and needs.

We therefore ask this committee to come to the United States Penitentiary, Leavenworth, Kansas, and to hold open hearings in the auditorium of the institution, with the press in attendance. This would serve two very important functions.

First of all, it would show prisoners that they can operate peacefully, prayfully, and legally within the system for change. Nothing would do more to stop some of the unacceptable protest which has gone on in prisons in the past. When tears for Justice can only be stopped by a dam of anger the river of crime will flood. Secondly, and most important, it would allow you to really learn how prisoners think, feel, and believe, and thereby enable them to tell you what they believe would create change in them which would bring about the useful constructive citizens we all desire.

We sincerely and respectfully thank the Committee for this opportunity.

STATEMENT OF THE EGYPTIAN JAYCEES, FEDERAL PENITENTIARY, MARION, ILL.

Below is just one case of how the United States Parole Board operates: Fair? You decide. A man is getting ready to appear before the United States Parole Examiner in March, 1972, here at Marion, Illinois. This man's spirits are high because he has completed the program that was requested of him by his team, chief of classification, case worker, counselor and the Supervisor of Education. He is certain they all are recommending him for parole. At last! He is called into the Board Room. His caseworker, the Parole Examiner and his stenographer are sitting around a table. He is questioned about his present conviction. Eight minutes later he leaves the room. On April 15, 1972, he receives a slip in the mail marked "continued with a progress report in March 1973".

This man had come into prison with a ten (10) year sentence for allegedly throwing a chair and hitting a federal agent. He is a two-time loser, with no skill or trade and an eighth-grade education.

His team promises him if he stays out of trouble, gets a High School (G.E.D.) and completes a vocational training course they will recommend him for parole. This man completes all the courses the team requested and enrolled in college. He has an unblemished institution record, has a home, and promise of employment. But, our fair United States Parole Examiner says, "No". His past record is too bad. Will this record change next year? No, it will remain for the rest of his life.

We feel this man's team, who has supervised him for years, knows him better than anyone, so why should a bureaucrat come in for eight minutes and say No. This same thing goes on, and worse, all over the Federal System; when, if ever, will it stop. We hope Soon.

(NOTE FROM GARY HILL.—The "example" given is an actual case involving inmate number 85631–132, Roberts, C., and can be documented.)

LIST OF INMATES

The following inmates have been returned to, and are still serving "time" in the Federal penitentiary for violations of rules under mandatory release. They were not returned for the commission of any new criminal acts. According to our figures they are a few of the approximately 2,400 men serving more time than they were originally sentenced for the same crime to which they were originally sentenced.

Number	Name	Sentence began—date	Original sentence	Time left to serve—as of	Amount of time over original sentence
71625–132	Atkins, G. A	Sept. 22, 1954	15 years	3,631 days, Sept. 20, 1968	9 years.
16666–149	Britian	Apr. 12, 1967	3 years	393 days, Nov. 10, 1971	2 years.
83350–132	Castano, R. V	Nov. 1, 1966	5 years	607 days, Dec. 5, 1970	1 year.
71382–132	Charley, W	July 2, 1954	18 years	2,388 days, Dec. 5, 1970	5½ years.
87202–132	Dunn, A. H	July 6, 1961	10 years	1,428 days, Apr. 12, 1972	4 years.
78219–132	Fleming, F. A	Oct. 20, 1960	12 years	1,441 days, Aug. 16, 1970	1 year.
80452–132	Gibson, E	Aug. 3, 1962	10 years	1,331 days, July 14, 1972	3½ years.
78460–132	Grissom, H	Feb. 17, 1961	10 years	1,317 days, Feb. 18, 1971	3½ years.
80527–132	Hess, F. A	Mar. 27, 1963	7 years	838 days, Nov. 23, 1971	3 years.
60084–132	Jahn, R	June 11, 1912	25 years	1,536 days, Nov. 30, 1970	7 years.
81598–132	Johnson, A. A	July 20, 1964	8 years	972 days, June 30, 1971	2 years.
82318–132	Kruger, J. E	Mar. 1, 1965	5 years	620 days June 19, 1971	2½ years.

Note: The court sentenced the above men for a set period of time—whether they served that time in a walled institution or under strict supervision on the streets, they were still serving that time. The number of years indicated in the right-hand column says that over and above the original dictates of the court—these men have not, nor will be citizens of the United States.

Proposed Parole Incentive Plan of Trailblazer Jaycees, Legislative Reform Committee

The cry of despair is heard throughout the federal prison system that, "We don't understand why we did not receive parole. We took part in every program available. We tried to work for parole, to earn it, and do what we were told was expected of us, taking part in the existing programs. Still, we were denied parole, and given no reason why."

What is required of a man before parole is granted? No one knows! No one, in the Bureau of Prisons or the U. S. Board of Parole, can give you the criteria, or basis, upon which the Board operates in the granting or denial of parole.

Dr. Willard Gaylin, Professor of Law and Psychiatry at Columbia University School of Law, and president of Society, Ethics and Life Sciences, spent five (5) years studying the mysteries and inadequacies of the present federal parole system, working within the Board of Parole, using and researching their official records. Dr. Gaylin states the United States Board of Parole is one of the great enigmas of our judicial system. Why? Because its mandate is in doubt, its methods unpublished, its immense discretionary power totally unstructured, its decisions absolute and unreviewed, its effectiveness unevaluated—it is clearly an anachronism.

Because the present operating procedure of the U. S. Board of Parole leaves no hope, no guidelines to give a prisoner reason to believe improvement worked for will be considered by the Board, we present the following Parole Incentive Plan. The purpose of this plan is threefold.

First, the plan will remove from the present Parole Board the power to decide on the future of prisoners while operating under the present mode of no set criteria by which an individual can guide himself. The present parole system, just as is the present prison system, is a proven failure. It operates impersonally, with all the prejudice and bias which is attached to a bureaucratic agency.

Secondly, this plan will instill in the individual an incentive to respond to correction, motivating him/or her, to participate in meaningful forms of self-development and improvement, all used in forming a productive citizen for return to society. This plan will give the individual the knowledge that he or/she is contributing to their own future.

It is proposed that upon conviction the sentencing Judge, rather than sentence a man under the present Law/section 4208 (a)(1) or (a)(2), the Judge would instead sentence the convicted person to a term of years, and at the same time place in trust for him a specified number of points which the individual would be required to earn for an earlier release. For example, we suggest that an individual sentenced to a ten (10) year sentence be required to earn five thousand (5,000) points. He could then earn these points per the attached proposed point schedule.

The sentenced prisoner then has two choices. First, the individual can elect to serve the full ten (10) years in confinement. Or, secondly, he can apply himself in a meaningful program, designed to make the individual a useful and productive citizen upon release from custody. Upon the earning of two-thirds (⅔) of the points assigned by the sentencing Judge (the acquiring of such points indicating an application for betterment of self by the individual.), the prisoner shall automatically be released on supervision. The individual shall then be required to earn the balance of one-third (⅓) of the points within the free community at a rate deemed to be in the best interest of fairness. Points in the free community would be awarded for gainful employment, civic participation, education/vocational improvements, etc.

The third purpose of this plan is to give incentive for performance as a partcipating citizen in the free society. Let us assume it took an individual four (4) years to earn the two-thirds required points in an institution setting, and one and one-half (1½) years to earn the balance of one-third (⅓) in the free community, for a total of five and one-half (5½) years. Incentive to continue as a useful citizen should be a full pardon, a forgiving of the wrong, recognition of the achievement accomplished.

Our entire society is run on a system of rewards for achievement. We therefore propose that upon completion of an additional two and one-half (2½) years, for a total of eight (8) years (4 years in prison; 1½ years on supervision; 2½ years performance as a useful citizen.) the convicted person shall upon written application, and sponsorship by a member in good standing in the community, be entitled to an unconditional pardon from the proper authority, expunging all past record of the crime committed.

In conclusion we would point out that President Nixon has declared just recently: "The American system for correcting and rehabiliting criminals presents a convincing case of failure." John Mitchell, former Attorney General of the United States said in a speech at the National Conference on Corrections at Williamsburg, Virginia, December 6, 1971, that: "We conclude that the present prison system is antiquated and inefficient. It does not reform the criminal. It fails to protect society. There is reason to believe that it contributes to the increase of crime by hardening the prisoner." At the same conference Chief Justice Warren Burger stated that programs should be established which would allow prisoners to earn their way out of prison. That is what the proposed parole incentive plan is all about. It is as simple as the words of the novelist, Dostoyevsky: ". . . neither convict prisons, nor prison ships, nor any system of hard labor ever cured a criminal." We believe that humans respond to incentive. If *any* corrections program is ever to succeed prisoners must have incentive. That is the purpose of our proposed parole incentive plan.

PROPOSED METHODS FOR EARNING POINTS

Conduct—25 points per month.

Attendance at a Vocational Training or Educational program 25 points maximum per month, per course.

Grant of points upon graduation or completion of a course, not to exceed 200 points, based upon importance of course.

Not less than two (2), nor more than five (5) points per day allowed for service in a work position.

Religious Service participation—10 points per month.

Blood Donation—15 points per pint of blood.

Group Activities, i.e., Jaycees, A.A. N.A., Cultural Groups, etc.—5 points per month.

Grants from 25 to 50 points, not to exceed 100 points (No more than 100 points could be granted in one year) for outstanding service in assigned task, similar to present Class II awards, upon approval by either the Warden or Director.

Mr. HILL. Thank you. If I may, I will paraphrase so I may save us all some time.

Senator BURDICK. That is right.

Mr. HILL. We are not particularly concerned in our testimony today to give you any emotional information which witnesses tend to like to do at these hearings; but in order to set the stage from our standpoint, there is a part of a letter that I would like to read that I think will give our background.

This, I received Monday of this week, one of many similar letters that I receive in our headquarters from correctional programs in the U.S. Federal penitentiaries.

And it said very simply:

Well, Gary, it looks like I have another year to do in this place. Last Friday at 3:50 p.m., I received the results of the Parole Board. "Continue with a progress report July 1973." In our language, this means a one-year, actually 13 months, set off.

Then, skipping down in this letter, he said, "Why the set off?" Really, I wish I could answer that but I cannot. Although the Parole Board made its decision while my mother and Rod Saalfeld, the vice president of the Washington State Jaycees, were in Washington, D.C., speaking with them on the 11th of July, they did not tell them what their decision was to be, nor why.

When I received the results, I asked why, but I got no answer, no reason, no nothing. Just, "I don't know." As you are aware, Bob Thornton, another Washington State Jaycee, is my parole adviser. We had everything going for us. We didn't miss a punch. I had an AA degree with high honors, one of the outstanding Jaycees presidents in the State of Washington, which is a fair accomplishment for a man

behind prison walls. And he spent 5 years inside the institution, which is the minimum that he must. And he had the sentencing judge's recommendation for parole.

The DA said he did not object. He had many letters of recommendation and he had many letters of recommendation from institutional staff people. He had four job offers, two sponsors, two homes to go to upon release, and with advanced tuition paid at the University of Washington. He had been accepted at the beginning classes on September 25, and I could go on. And he doesn't know why he was turned down.

We in the U.S. Jaycees have programs going on in a little over 200 correctional institutions, 19 of which are in Federal institutions. Probably the mainstay of our program is mainly to bring warm bodies from the outside community to the people incarcerated at various institutions.

Just as what I think the entire corrections system is after, the main purpose of that contact is so our people can be familiar with the man, so that on his release we can help with a job, housing, social, whatever the need might be.

Senator Mathias, prior to leaving, indicated in talking to Senator Percy, that unless the business community is going to cooperate, obviously, any of the legislation programs will be relatively ineffective. From our standpoint we found tremendous cooperation from the business community. We don't have any trouble finding several different job sources for a man, any man released from a correctional institution, this is not our problem.

However, when our outside contact must go to an employer and ask that, pending parole, a man be given a job offer—because you can't make parole without a job offer—and we present to him information that the institution has told us we must have—letters of recommendation, the standards that the man must meet—when we present this to an employer, he says, sure, we will give the man a job. But then, obviously, when we go back to the same employer and have to tell him that the man was turned down for parole and we have no reason, we then start to shut off the sources of employers and other community resources.

And this is, in the vernacular of the streets today, a hangup, and it is a very big hangup. We are trying to work with people being released.

In terms of some of the specific bills, we have had a very short time to look at them. And rather than spending a lot of time on three of the bills, one, particularly that Senator Percy was talking about, and we don't support it—because we are supporting bill 3674, which is it in detail. We request that this committee get together with the House committee on bill 13118 in terms of the general philosophy. And I know you are familiar with it because you have had testimony on it today. We feel that this particular bill, 13118, encompasses probably as far-reaching a measure in terms of what we are hoping to see accomplished in the parole system as anything we have seen to date.

We think there are some particular problems with 13118, but in combination with Senator Percy's bill, we think that a very equitable bill can be worked out. The regulation that Senator Percy brought out, the overall coordinating council, we find very, very much to our liking.

On bill 2955, we do not support it—and it becomes obvious why we don't support it—because we are supporting bill 3674, which is for the whole ball of wax instead of a token gesture. Bill 3674 (as indicated earlier by Senator Percy and some of the testimony you had in previous days) as an organization—not just speaking for myself now—as an organization, we are extremely interested in it.

We found that, especially under the provisions of the mandatory release, there are a very large number of men doing more time in the institutions than the court originally sentenced them to, because their time on the street did not count for them. As an organization, and we have studied this for a little over a year now, this is the chance that we waited for; and bill 3674 answers this immediate need.

We have included in our testimony for the committee to go over the names of 12 men currently incarcerated in Federal institutions (and we have a list of some 2,400 men). These 12 men are listed in terms of when their sentence began, how long they were sentenced to, how much time they have left, and on the extreme right column, the amount of time over the original sentences that these men will serve under supervision, under the care of the Attorney General.

Senaor BURDICK. They lost their street time.

Mr. HILL. They lost their street time. The street time, which you are well aware, is under supervision. These particular 12 men and the other 2,400 that we have cataloged committed no additional criminal actions. They committed actions such as leaving their jurisdiction without permission.

Senator BURDICK. And violated the terms of their parole?

Mr. HILL. A couple got married, and this type of thing. We do not feel——

Senator BURDICK. Was that the grounds for revocation, that they got married?

Mr. HILL. In two cases, yes, without permission. You can get married, but you must have permission. It is tough enough to get my father to approve, let alone you. [Laughter.]

Going on to finish paraphrasing, the work I think we are interested in—we are very interested—is going to a parole system as bill 13118 and part of Senator Percy's and the other bills indicated, wherein a man has a total hearing, where his parole is automatic unless he is given a reason why it shouldn't be.

A way to help establish this is included in the last part of our presented testimony. On a proposed parole and incentive plan, there has been much testimony and much generalized talk about establishing a set of guidelines. The Chief Justice of the Supreme Court has used the words—as you are aware—to "work your way out of prison." And, of course, men don't know now why they are not authorized their parole.

We propose through one of our Jaycee chapters located in the Federal Penitentiary, Leavenworth, the parole incentive program. We would like to leave with the committee for your staff to look at and comment upon, this incentive parole program.

Senator BURDICK. It will be made a part of the file, if you will supply it.

(The material above referred to will be found in the files of the subcommittee.)

Mr. HILL. Finally, we would urge this committee, with all respect to your very busy schedule, if at all possible, to go to one of the Fed-

eral institutions, particularly Leavenworth, where there is a committee that has been working on legislation for quite some time. We, in no way, obviously, expect the committee to listen to the words of the inmates and immediately write it into law——

Senator BURDICK. I want to have you know that I have visited practically every Federal prison in this country.

Mr. HILL. Individually, we know you have.

Senator BURDICK. I want you to know that I know all about the Jaycee operations and I know it is very good.

Mr. HILL. Thank you, sir.

We want the hearings to be open, because we think there are a number of men who have gone through the parole system time and time and time again, and probably will go through it again. There are crooks in prison; we know that. But we think that there should be open hearings. If the committee does not get their testimony, you will only have half the story if you are bringing only the experts, only the do-gooders, and so forth; but we think the people that have been through this system also have some input that we would hope would become part of the record also.

And if there are any questions, Senator?

Senator BURDICK. Thank you.

We just have one question, I believe. In considering the merits of street-time credit, should any differentiation be made between the technical violations and the revocation time based on a new conviction?

Mr. HILL. No, a new conviction will bring with it new penalties. We are asking that where a man does good for x period of time, it also counts to his credit.

Senator BURDICK. So if he gets married or robs a bank, it would be the same?

Mr. HILL. Yes, if he robs a bank, he would get a sentence, but also if he gets married, he would have a different kind of sentence.

Senator BURDICK. A different kind of sentence. [Laughter.]

Thank you very much. And, again, I want to commend the Jaycees for the interest they have taken in this subject. It is your interest that has created a new awareness of this problem that exists.

Mr. HILL. The awareness has been shown for 40 years. The action hasn't. That is why we are interested.

Senator BURDICK. Thank you.

Mr. HILL. Thank you, Senator.

Senator BURDICK. Our next witness is Mr. Peter B. Bensinger, director, department of corrections, Springfield, Ill., and he is accompanied by Mark Luttrell, director, department of corrections, Nashville, Tenn.

Could you both come up together? It is the same subject. Decide between yourselves who wants to go first.

STATEMENT OF PETER B. BENSINGER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, SPRINGFIELD, ILL., ACCOMPANIED BY MARK LUTTRELL, DIRECTOR, DEPARTMENT OF CORRECTIONS, NASHVILLE, TENN.

Mr. BENSINGER. Mr. Chairman, I am delighted to be able to join my colleague from the State of Tennessee to appear before you.

I will try to make my remarks brief and possibly, then, I can respond to the questions.

First, I want to address myself to Senate bill 3185, Senator Percy's bill, because I think it does three things which have been long overdue in the corrections field. It provides for an integration in our senior governmental agencies, and it provides for an integration of various parts of the system that traditionally have been fragmented, not only in the States but at every level.

It puts the parole and the institutional processes in a much closer relationship. The future, we feel, in corrections is moving an individual from maximum to medium incarceration back into the community for the protection of society. We feel standards, guidelines, for the institutional operations where certain due procedural matters, for new constructions, new facilities, for presentence reports, are necessary, and I would think the Federal Government would be the appropriate leader in this field to set the trail.

In Illinois, our Governor signed a Unified Code of Corrections, which codified in 471 pages a variety of subjects ranging from censorship of mail, showers, visits, to a matter of making it against the law to jail children under 16, for county jails to commit juveniles under 13 or over 13 for offenses for which they would not have been held accountable from a criminal standpoint if they were adults.

The criminal code goes into the question of sentencing and in Illinois, the sentencing judge will have to declare the reasons for his sentence, and it makes our law that the parole board must state the reasons for the denial of the paroles.

I am very supportive of the statement that Senator Percy makes and puts forth. I think we have to remove the mystery from some of the decisionmaking procedures. The advisory council, I think, is needed.

In our own State, we have an advisory board. It is chaired by Prof. Normal Watts. That has given us a great deal of assistance in our basic policy and the consideration of the construction of new facilities in our long-range planning. I feel Norman Cousen would not agree, and I have a tremendous respect for the Director of the Federal Board of Prisons.

We have a great one, I think, and an advisory board is an appropriate vehicle to take into consideration some of the questions proposed in Senator Percy's bill. Certainly, the rationale for sentencing is necessary so an individual offender knows why he is in prison.

Our parole board does have to state the reasons why it decided for or against parole, and there has been some directive from the legislature as to how it should be stated in general terms.

Senator BURDICK. What does the requirement procedure for specific reasons, or general reasons, why——

Mr. BENSINGER. There are three basic reasons. One is that the individual board members would have to have reasons to believe that the individual would not conform to the law-abiding life in the community, but——

Senator BURDICK. But a general statement—would that have to say or specify why?

Mr. BENSINGER. They would not be required to specify. They would have to have reasons that they did not believe that he could conform to the laws of the community, or to the agreement of his parole—we

have a signed parole agreement—or that the parole would promote a disrespect for the law.

Maybe somebody could conform after serving a year on a murder sentence, but this would actually not be in keeping with the standard on the classification of the offense. The hearings, we have had for parole are 1 or 2 months before the legal date. We advanced our dockets and we have the annual review in Illinois so if an individual is paroled, there can be a 30- to 60-day prerelease when he is getting ready to get out, the day that his parole would become effective, or his eligibility on the minimum.

I felt the staff bill was asking for trouble in the language of the precluding substantive issue. We have just issued administrative regulations and I would like to make that a matter of the record, and——

Senator BURDICK. We will receive it for the file.

(The material above referred to will be found in the files of the subcommittee.)

Mr. BENSINGER. We have indicated that persons under commitment will be given factual information or information relied upon by the disciplinary committee, signed by the committee, merit staff, or parole board, to make the determination of the results of the length of the finding, such as parole denial, of the revocation, loss of good time, or institutional credit.

Such factual information should be given to the inmate. This factual information, I think, addresses itself to the question that you earlier brought up to, I think, Mr. Hirschkop and Senator Percy, as to what the inmate should have access to and what he shouldn't have access to.

If the factual information affects the length of time that he is going to spend in the institution, I would see no problem in having him have access to it. I think the other materials that would not necessarily bear on the length of his confinement——

Senator BURDICK. Again, I come back to the remark that I made earlier, to make this separation it requires some discretion.

Mr. BENSINGER. I would think that the access to the inmate should be on factual information affecting his assignment, and we have a 12-point master file which includes presentence reports.

Senator BURDICK. A statement by his wife would be fact.

Mr. BENSINGER. It might be a fact, but unless it related to a specific instance——

Senator BURDICK. It probably did. If that was released to the inmate, that might result in a divorce.

Mr. BENSINGER. I would not be supportive of having some type of information that related to a future prediction of whether he or she could get together. I think you hit on a very important point.

Now, a lot of people, unfortunately, have problems at home and the type of information should not be made available, but I think what the board would consider, or does consider, would be specific instances that have happened in the past.

Senator BURDICK. But you would still have to have some discretion in that type of letter.

Mr. BENSINGER. Mr. Chairman, I don't have an automatic type answer, but we do have a factual type of information that is provided to the parole board that could not jeopardize the operation of the in-

stitution. As far as making it available to the inmate, not recommending that the inmate be represented by council on the parole decisions, parole revocations, is a different question.

Perhaps my associate would have some remarks to add with respect to your question, but how do you feel, Mr. Luttrell, that we should look logically at the Federal Government for guidelines, for standards? And I think the LEAA, HEW, Department of Labor are at long last making major sums of money available to the States, the county jails, for overcrowdings, staff which is underpaid and unappreciated, and the utilization of some common type of standards which would do a great deal to promote a change in our justice system, in the improvement of the system, improvement in the training, which is, of course, I think, vital to the whole problem.

I certainly endorse Senator Percy's bill. I suggest that instead of having 90 different districts, that he might use a circuit approach which would reduce the number of different——

Senator BURDICK. Or a district approach.

Mr. BENSINGER. Yes, but the philosophy of establishing standards and guidelines for correctional institutions and for procedures, the integration of parole systems with the Federal Bureau of Prison and Institution System, merging of the responsibility of the criminal justice, providing an advisory council agency to look at and make recommendations, legislative and financial, that that would improve and increase the justice system as a whole.

Senator BURDICK. Now, we will hear from the gentleman from Tennessee.

Mr. LUTTRELL. Thank you, Senator.

I appreciate the opportunity of being here.

In regard to Senate bill 3185, after coming here and, in fact, before coming I watched as much as I could, the functions of the Federal Probation and Parole Board. Frankly, I am not familiar with the problems that have been mentioned here this morning, to make comments or criticisms on what they are doing, other than one or two cases.

Most of our States meet with the individual as he comes before the Board, which I think is a necessity. I think it is bad for the probation and parole—the Federal Probation and Parole people to make a decision in a manner where a man or woman is 1,000 miles away and have never seen or talked with them, and leave that individual hanging for weeks as to whether he or she may be paroled.

And when they do find they failed to make parole, they don't know why they failed.

Just recently, I had a female in our women's institution. She had reason to believe, or had been told on a certain date her case would be considered for revocation, and some 2 weeks later she still did not know what disposition had been made. She was in tears. I picked up the telephone and called the probation officer and he said that he had the information, that she had been paroled and she would be leaving within the next week or 10 days.

That woman went through agony, not knowing whether she had made parole or not made parole. Had she not made parole, apparently, she would not have been given a reason. Our State gives the reason. They face every man and woman that comes before the board, and

after a period of judgment, the individual is called back into the room and told exactly why they were denied parole, and also they are told when they will have the opportunity to be able to appear the second time.

That is, I think, needed. That is one of the strongest points in bill 3185. I think that the Federal system has some advantages over those of us who are in the State system, in that as I understand it every man goes out under some type of supervision under the Federal system, and in many of our States—and ours is included—we release about 1,800 men a year. About 800 of them go out under parole or some type of supervision and they go because of their institutional record, the way they have conducted themselves, the manner in which they have served their time. They go out under supervision.

Another 800 have been denied parole for various reasons. Maybe because the crime was committed, maybe the institutional record has been bad, but yet they go out on this basis. They have been denied flat.

I think it is a must for our State that every man goes in under supervision so he can have some guidance and counseling the day he leaves our front door. That is a goal of ours in the next session of our general assembly, that we have that provision, to provide supervision for all those people.

As far as the organization that has been outlined in S. 3185, certainly some type of national supervision, advisory council, should be set up. I am not in a position to make recommendations. I do believe that the section dealing with the district boards are good. It gives better opportunity for presentencing reports, for using those presentence reports for our—to the best possible advantage to prevent incarceration.

To me, the incarceration should be absolutely the last resort. If any given number of those of us in this room today were put behind bars for 5 years, for example. there is no doubt in my mind that a number of us, a good number of us, would come out of the institution—regardless of what the crime was—we would be in a lot worse condition than we are today.

So as the result of that, I think incarceration should be the last resort, and the presentence report should certainly be used in regard to first offenders, and keep them on the street under some strict supervision as long as we possibly can.

When that fails, there is no other route than to, evidently, incarcerate them.

In addition to my comments in regard to S. 3185, may I burden this committee with just a few other factors pertaining to the problems we have in corrections today.

In our department, based on our diagnostic surveys, we found 22 percent out of our people in our medium security institutions. 22 percent of them had committed crimes, but they are people who are not likely to come back. This is regardless of what we do to them while they are there. The chances are that they will not be back.

We find 16 percent of our population that have birth defects, mentally retarded. They need professional help. We found 60 percent of our people who definitely need professional help and, unfortunately, most States are not equipped to give these people the kind of guidance, the kind of treatment that they need. As a result, they deteriorate even

worse that the 22 percent we consider normal when they come to us, and go back to the street and never come back to see us.

So we have a tremendous job at the State level in trying to provide treatment for these people who eventually will be considered for parole. How do we do it? We have the academic training. We have the college behind the walls. We have counselors in our system of 3500 adults behind bars today. We have approximately 100 counselors that work with those people.

It behooves us to work toward the changing of the attitude of these individuals and I think we will all agree that that is one of the most difficult things that man has to do, or can try to do is to change the people and change the attitude of individuals who have come to us for a second or third time.

One of the most difficult problems that we can get into today is to change the attitude, to improve the self-respect, because so many people come out of prison today and those that have worked with them know what they are thinking. They get on a bus to go to another city because they feel everybody is looking at them and think, there is an ex-con, he will probably commit a crime.

He has that feeling. He has such a low self-concept because he has served time. As a result, the least bit of depression, discouragement, that he happens to meet within those first few months, he is most likely to drop back into the field of crime.

Certainly there is a place for training, academic training and, frankly, I was disappointed in a national meeting held in West Virginia about a year ago. Very, very little was said concerning the attitude modification, and I have just witnessed this among five of our parolees, within 3 months after they had been released they were back to go before the Board for parole violations. They were being violated primarily because they quit their jobs, they began sleeping all day and playing around all night.

And I went to them and asked them, why did you quit your job? Why did you lose your job? They had been through this vocational training. They weren't skilled craftsmen, but they were skilled enough to know what tools to handle, how to do the job, and certainly as a trainee.

This is the type of answer I got: one of them said he quit his job because he didn't want a full-time job; he wanted a part-time job. So he quit. And another man quit his job because his father worked day shifts and he worked the night shift and his father couldn't get him to work by 7:30, so he quit.

I said, why didn't you catch a bus? He said, I would have had to get up about an hour earlier to catch the bus and I didn't want to get up an hour earlier. That is an example of why these young people leave their jobs. Their work habits when you start out are poor and the work habits that we try to develop within the present are not sufficient in many, many cases to cause them to really want to stay out of trouble. Their attitude toward their crime is such that it is an easy life. They can work a few hours at night and they are able to make their living.

It is our feeling that one of the most vital things that we have going for us is that this is the concerned citizen in any given community that is located near an institution, or is within close radius of probation offices, to solicit the help of volunteers to work with probation counselors or with counselors within the prison.

Some of the greatest relationships that I have known have been built between an inmate and a citizen. To give an example, I had some volunteers in the city of Memphis when I was the Superintendent of the County Institution, and one of the fellows who got interested in one of the inmates came to see him every week. He came because he had love and compassion for this individual, as we would have had for many others.

The young man completed his sentence. He went on the street with the help of this volunteer. He got a job. He found a place to live and in 3 or 4 months he was back in trouble. This time it was a more serious crime and he had gone to the same penitentiary and he had some mental problems, and in a few months he ended up in a maximum security prison right across the walk from James Earl Ray.

This volunteer found him the next time 400 miles away from Memphis. This volunteer drove 400 miles to see this young man and counsel with him. Upon his request, I moved this prisoner from that location to one some 60 miles from Memphis and he has continued to work with him.

There are literally thousands of volunteers who want to help in this Nation. There are civic groups that are anxious and willing to help, and I take my hat off to all of the Jaycee Chapters over this Nation for the part they have played, and there are many individual citizen church groups that are willing, if we will get in the position to use them.

I think our Nation's leaders are certainly more conscious of the needs in the recent session of our legislature than they were previously. They were great to us. Our Governor has quite a bit of support for us. He has given us two new regional facilities. These are small facilities where we can work with each individual on the name basis and as a result I think we can do a better job than that of having 2,000 prisoners behind one set of bars in an area of 8 or 10 acres.

To give you an example, a week ago today I was facing 150 guards who were on strike. They were striking in an institution, regarding housing which was for the hardened criminals. But in the 18 months that I have been in office, I have never had any trouble from that institution, from the inmates. Our problem came from the officers and the reason we had the problem was that it was a small institution. We had frequent programs and even though many of them were doing 99 years, they were active in our programs.

So we need small institutions. We need guidelines and guidance and counseling and academic vocation work in those small institutions, and try to have these men in a better position to accept the programs that are outlined in S. 3185.

I, too, feel that the federal system should be, and is in many cases, a demonstrator of what we at the State level could and should do. Our State system as a whole is much, much larger and, hopefully, the Federal system could be one that would institute pilot programs that could be used to our advantage on the State level.

There are some advantages that the federal system has that we have problems. The petty politics, for one thing. It is my understanding that in the Federal system you do not have that. Quite often in the change every 4 years there is a turmoil among our guards who are afraid they are going to be fired because they didn't vote right.

There are other problems in the State government whereby an in-

dividual feels that because he voted a certain way he is going to lose his job. He becomes anxious and as a result he doesn't do his job well. And he and his friends who voted like him are inclined to think that, "They are going to get me this time."

That spills over into the inmate problem. They become restless and, as a result, the programs suffer. We have had a demonstration in our State just recently. To give you an example of the problem we have in securing people to work, we have a 30-percent turnover in our staff, correctional staff primarily.

To give you an example, just recently the highway patrol needed 25 men. They had 325 people to select from. We needed 30 or 40 people this morning and we had interviewed 20 people who had applied for work in a correctional institution. As a result, we take the best we can find. Hopefully, they are younger people, young, aggressive career people, and when they find a job that pays equally as well, they take it, because there is some danger behind bars.

Gentlemen, I haven't added to S. 3185, rather than to say that I endorse it highly, the idea of getting closer to these people, interviewing them before they go on parole, and give them the best possible supervision.

Senator BURDICK. One question.

Do you agree also that rather than have those 93 parole boards, probation boards, it would be more practical to have them in districts or regions?

Mr. LUTTRELL. Probably districts. Well, I would say this, Senator. Wherever it is feasible to make it possible for every man to meet and talk with the board, whether it would be regional or districtwise, would be appropriate.

Senator BURDICK. Well, I want to thank both of you gentlemen. You have made a good contribution this morning and we thank you for coming and giving us your contributions.

Mr. LUTTRELL. Thank you.

Mr. BENSINGER. Thank you.

(The complete prepared statements of Mr. Bensinger and Mr. Luttrell, above referred to, follow:)

STATEMENT OF MARK LUTTRELL, OF TENNESSEE

Gentlemen: I appreciate the opportunity of appearing before this distinguished body for the purpose of discussing various phases of the proposed Senate Bill 3185.

For many years, it has been my feeling that the Justice Department of the United States Government through the Bureau of Prisons through the Probation and Parole Board should be the trailblazer in innovated programs through Correction that would effect every incarcerated individual in these United States. The recommendations that are brought out under S3185 is a step in this direction, and it is sincerely hoped that the lawmakers of the Federal Government will look favorably on the recommendations of this particular Bill. I can see a need for a Federal Circuit Offender Board as well as a Federal Corrections Advisory Council, but I am particularly impressed in the recommendation of establishing District Court Disposition Boards that will put every federal inmate in close connection with a group of men who can be of tremendous value to the institutions and programs that the inmates are exposed to. One of the weakest links, I feel, in the Federal Probation and Parole System is the fact that parole decisions are made without the inmate having had opportunity to face the people who make judgments concerning his future, and I think it is imperative that he have this opportunity.

I feel that the Board that makes the decision can use better judgment if they have this opportunity of personal contact.

There are isolated cases over our nation today and problems in our Federal Correction system where inmates are given the opportunity of signing a contract with the institution in which they are housed where they pledge to accomplish certain things during their period of incarceration. I think major stress on this particular function is good and is being recommended in S3185.

For many years, I have felt that the Federal Bureau of Prisons possibly did a better job of supervision of parolees since every released individual from a Federal Prison is under some type of supervision. It is my feeling that this practice should be continued on a State level throughout the nation. In our particular State, approximately 800 men are relased each year under supervision. These happen to be the individuals who have the best records and the Parole Board feels that with proper supervision and chances of leaving a life of crime are good. The sad part of this function of our Department is an additional 800 leave our institutions each year with no type of supervision due primarily to the fact that one and two year sentences carry no parole date and the others have been denied parole because of their past record or their institutional record. I feel that it is a must that this should be corrected and it is a goal that we will work toward during our next session of the General Assembly.

We in Tennessee, would hope that the Federal Government would be in a position to advocate and promote this type of program. I would further recommend in regard to building the best possible Probation and Parole System that each Counselor in State and Federal systems be urged to solicit the help of interested, compassionate citizens in their respective communities to assist them with the supervision of one or two individuals that they feel they could be of assistance to. Based on my experience, some of the most meaningful relationships between an ex-offender and one who is interested in crime prevention is a relationship that can be developed between an ex-offender and a business or professional man that has a sincere interest and desire to be of help in the field of Correction.

Unfortunately, too many of our prisons today are detrimental to an individual who is incarcerated for a given length of time. I dare say that most of us in this room today after spending a few years behind prison bars would be in much worse shape socially and mentally upon our release. This is due no doubt to the individuals they associate with, the anxiety that builds up and the hardness of character that develops while serving time. I would strongly endorse the features of S3185, in that, incarceration be used as the last resort toward first offenders and even second offenders in many cases. Not only does a period of incarceration damage the individual concerned, but causes undue hardships on the family of this individual which no doubt has a bearing on the type of life that develops with children who face hardships as a result of the head of the house being incarcerated for a given length of time.

Gentlemen, I sincerely endorse the legislation that is proposed in S3185 and urge the members of this Committee to look further into ways and means of using the facilities of the Federal Government to teach those of us in the State systems better ways to improve our prisons and have a more successful accomplishment than is currently being done over the nation. I would further recommend those of us on the State level use every possible means to improve our procedures by the use of concerned citizens either on a one-to-one basis or through civic or church groups that are anxious to be a part of it. It would be further hoped that with your help, State systems might have the opportunity to make longer and larger progressive steps through the selection of the best possible staff to be paid decent salaries in order to attract and hold young people who enter our system and leave us before we have opportunity to afford them the salaries that they should have.

I appreciate the opportunity of presenting these facts and look forward to this Committee making progressive steps in regard to Prison Reform.

Testimony by Peter B. Bensinger, Director, Illinois Department of Corrections

Mr. Chairman and distinguished members of the National Penitentiaries Subcommittee of the Senate Judiciary Committee:

I am honored to have this opportunity to comment in favor of Senate Bill 3049, the National Correctional Standards Act, and Senate Bill 3185, the Federal Corrections Reorganization Act.

As Director of the State of Illinois Department of Corrections, I fully recognize that the enactment of these bills into law would have a profound effect upon the agency I administer and upon the correctional systems of all other states as well. I welcome these Federal proposals particularly since we need specific minimum standards in order to evaluate correctional systems.

It seems, also, that the state judiciary will welcome such standards as a measurement in attempting to determine what practices and levels of treatment or program services constitute proper treatment, care and custody. Should these standards of the proposed National Advisory Commission be acknowledged by the judiciary, the current wave of court cases involving correctional practices will be reduced as all parties concerned will be able to readily identify what is reasonable conduct by correctional administrators.

For those states seeking more than minimum standards—and I am proud to say that Governor Richard B. Ogilvie of Illinois fully supports our attempts to achieve corectional excellence through innovation and reform—I expect the Federal corrections Reorganization Act to produce a model for effective correctional system administration, treatment and programming.

Speaking as a corrections administrator, I support the intent of the Federal Corrections Reorganization Act in attempting to strengthen and coordinate the criminal justice process into a viable system of social justice. At the same time, in Illinois we have learned by our efforts in the area of remedial legislation that one must be aware of precipitating more interagency and intergovernmental department problems than our proposals were meant to solve.

Title II of the Federal Corrections Reorganization Act might require further clarification. I am not clear as to how the Federal Circuit Offender Disposition Board can take over both advisory and administrative duties affecting the Judicial and Executive branches of government. Would the Bill be strengthened by reposing only the advisory role with the Board at the outset?

Also, S. 3185 seems to create a massive super-structure with the 90 districts or court distribution boards authorizing a body of 450 persons to perform the functions currently handled by the Federal Parole Board and the field probation services. As you know, some Federal District Courts are much smaller than others, both in caseloads and in number of judges. In Illinois, for example, the Eastern District has only two judges, as does the Southern District; while the Northern District has 12 judges and a far heavier caseload.

Rather than have 90 boards, would it not be more practical to have Regional Boards, perhaps one for each circuit? For example, the Seventh Circuit is composed of Indiana, Illinois and Wisconsin. It would seem feasible to have one advisory board for this region, rather than seven boards for the seven districts comprising the Seventh Circuit.

One last area of concern involving both Bills is that these legislative proposals are similar to the Bill recommending a like consolidation some years ago, but there is the absence of any basic, far-reaching study of the overall operation of Federal Correctional services. Perhaps a Legislative Advisory Committee, comprised of representatives from the Federal Probation Service, the Board of Parole or its successor, the Bureau of Prisons and the Federal Judiciary working together to assess the current needs might provide a foundation for such an endeavor.

All other provisions of these Bills have my complete endorsement. As a frame of reference for this Committee on the National Advisory Commission on Correctional Standards, I am making available three copies of the current Illinois Department of Corrections Administrative Rules and Regulations (Adult Division). A similar manual is being prepared for the Department of Corrections Juvenile Division, and this document probably can be made available to you in late August of this year. The Association of State Correctional Administrators is also developing uniform guidelines which will be reviewed at the business meeting in Pittsburgh this Augnst.

In summary, I welcome these Bills' potential impact upon correctional systems, confident that the standards imposed upon the state systems is both constructive and reasonable, and that the Federal and District of Columbia systems reorganization will be a demonstration model of administrative excellence in corrections.

Senator Burdick. The subcommittee will be recessed, subject to the call of the Chair.

(Whereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.)

[Exhibit, letter from Department of Justice submitted by Senator Burdick.]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES,
Washington, D.C., November 27, 1972.

Mr. HUGH DURHAM,
Chief, Legal and Legislative Section,
U.S. Department of Justice, Washington, D.C.

DEAR MR. DURHAM: I am enclosing a copy of page 53 of the transcript of the July 25th hearings on proposed parole legislation before the Subcommittee on National Penitentiaries. I am wondering if the Department is still in the process of preparing the supplemental letter requested.

With kind regards, I am

Sincerely,

QUENTIN N. BURDICK, *Chairman.*

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 4, 1972.

HON. QUENTIN N. BURDICK,
Chairman, Subcommittee on National Penitentiaries, Committee on the Judiciary.
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your letter of November 27th concerning the question asked by Mr. Meeker during the July 25th testimony of Board of Parole Chairman Maurice Sigler before your Subcommittee on National Penitentiaries. Mr. Meeker requested a statement as to why the exceptions to the wording "information from the files" as provided in the Committee print bill did not satisfy objections of the Department.

Federal Rule of Criminal Procedure 32(c)(2) establishes that disclosure of the contents of the presentence report is within the discretion of the sentencing judge. See *United States* v. *Cruther*, 405 F. 2d 239, 245 (2d Cir. 1968), *cert. denied*, 394 U.S. 908 (1969), Section 4203(c), as proposed by your Committee's bill, would provide that "An eligible person . . . shall have access to the contents of the institutional file (with the exception of) any part of any presentence report, upon *request* of the sentencing judge" (emphasis supplied).

The position of the Department of Justice, as indicated by Mr. Sigler, was that it would be confusing to create a presumption of disclosure in section 4203(c) while the Federal Rules of Criminal Procedure provide that presentence reports are presumed to be confidential. Our testimony sought to establish that, at the very least, proposed section 4203(c)(3) should exempt from disclosure "Any part of any presentence report, *unless disclosure is approved* by the sentencing judge" (emphasis supplied).

The Department looks forward to working with you and your Subcommittee during the next Congress on the important subject of Federal parole.

Sincerely,

PAUL L. WOODWARD,
Associate Deputy Attorney General.

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